

密勒氏評論報

THE CHINA WEEKLY

REVIEW

Formerly Millard's Review

中華郵政特准掛號立券之報紙

Registered at the Chinese Post Office as a Newspaper
for transmission with special marks privileges in China.

VOLUME XXV

SHANGHAI, CHINA, SATURDAY, JULY 28, 1923

NUMBER 9

THE CHINA WEEKLY REVIEW

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Cable Address "REVIEWING SHANGHAI"

PUBLISHED AT NO. 4 AVENUE EDWARD VII, SHANGHAI, CHINA,
BY MILLARD PUBLISHING COMPANY, INCORPORATED BY THE LAWS OF
THE STATE OF DELAWARE, UNITED STATES OF AMERICA.

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YEARLY SUBSCRIPTION, FIFTY-TWO ISSUES, TEN DOLLARS (CHINESE
CURRENCY) IN ADVANCE, POSTAGE INCLUDED IN CHINA AND JAPAN.
IN THE UNITED STATES AND FOREIGN COUNTRIES SEVEN DOLLARS AND
FIFTY CENTS U. S. CURRENCY. REMITTANCE FROM OTHER COUNTRIES
THAN CHINA AND THE U. S. CAN BE MADE BY INTERNATIONAL MONEY
ORDER. ENTERED AS SECOND-CLASS MATTER IN THE CHINESE POST
OFFICE AT SHANGHAI IN MAY 1917.

Contents

Editorial Paragraphs

American Interest in the Singapore Naval Base	277
Are Foreigners Worth as Much as Bandit Chieftains?	279
Chinese Bankers and the Shanghai Mint	279

Special Articles

China a Victim of Shylocks	Charles Dailey	280
Far Eastern Thought on the Proposed Naval Base at Singapore	H. P. Shastri	281
When Will China Have Her Next Government?	Peter S. Jowe	282
The Uncompleted Shanghai Mint		283
Administration of Criminal Justice in Ancient China		284
The Situation at Canton	H. W.	288

Miscellaneous

Dr. Frank Crane on Tour of the Orient		279
The Chinese Church 1922 National Christian Conference ..		283
American Policy Toward China		284
A New Point of View		284
U. S. Silk Association to Have Representatives Here		298
Who's Who in China		292
Men and Events		296
News from Central China		300
The Week in the Far East		304
General News Summary		306
New Books and Publications		
The South Sea Islands Again	R. B. L.	309
France, Germany and America	Hazel MacNair	309
China's Raw Materials		309
What the Ships Carry between America and China		310
The United States Court for China		311

COMMUNICATIONS PERTAINING TO SUBSCRIPTIONS OR ADVERTISING
IN CHINA SHOULD BE ADDRESSED TO THE CHINA WEEKLY REVIEW
AT 4 AVENUE EDWARD VII, SHANGHAI, CHINA. TELEPHONE CENTRAL
4741. CABLE ADDRESS "REVIEWING SHANGHAI."

AMERICAN OFFICE WORLD WIDE NEWS ASSOCIATION

303 Fifth Avenue, New York City
Telephone: Lexington 5300 :: Cable Ad.: Worwidnews, N. Y.
Orders for advertisements and subscriptions in the United States may
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AMERICAN INTEREST IN THE SINGAPORE NAVAL BASE *

LAST week there were two events of international importance affecting the Far East which practically escaped notice in the press of China further than the publication of brief news items. One was the passage by the House of Commons of the Admiralty estimates of £10,000,000 for the construction of extensive fortifications and drydocking facilities for a base for the British fleet at Singapore and the other item which received even less attention was the news of President Harding's trip to Alaska, the first trip of the kind ever made by an American president in the history of the American republic. These events were of importance to the Far East for the reason that they are the first definite moves of the two greatest naval powers in the world, the United States and Great Britain, along the line of readjustments in the Pacific in the light of the results of the Washington Conference in respect to naval limitation. Practically every one is familiar with the general terms of the naval limitation treaty adopted by the United States, Great Britain and Japan at the Washington Conference fixing the relative strength of the three navies in the proportion of 5-5-3. Concretely this treaty allows the United States to have a navy equal to that of Great Britain and forty percent greater than that of the next naval power, Japan. In the same treaty France and Italy are limited to a proportionate tonnage of 1¾ each. While practically every one who reads newspapers is familiar with the tonnage limitations in the naval treaty for capital ships, very few are familiar with the much more significant Article XIX of the same treaty which refers to the limitation of fortifications and naval bases. The opening sentence of this article reads as follows:

"The United States, the British Empire and Japan agree that the status quo at the time of the signing of the present Treaty, with regard to fortifications and naval bases, shall be maintained in their respective territories and possessions hereunder."

When the specifications are read all the territories and possessions to which they refer are seen to be insular. The agreement includes everything insular that Japan holds now or may acquire outside of the islands of Japan proper; it includes the Aleutian islands stretching out from the American territory of Alaska and everything insular, present or future, under our flag west of the Hawaiian Islands; and it includes Hongkong and present or future insular holdings of the British Empire east of 110 degrees

* Elsewhere in this issue appears an article by Mr. H. P. Shastri entitled "Far Eastern Thought on the Proposed Naval Base at Singapore."

east longitude, excepting the Canadian islands, Australia and its territories and New Zealand. The status quo is defined in the last paragraph of Article XIX.

"The maintenance of the status quo under the foregoing provisions implies that no new fortifications or naval bases shall be established in the territories and possessions specified, that no measures shall be taken to increase the existing naval facilities for the repair and maintenance of naval forces, and that no increase shall be made in the coast defenses of the territories and possessions above specified"

ANYONE who knows anything at all about naval strategy knows that a modern battleship is helpless beyond a certain distance from its supply base. The only insular base in the Pacific where the American battle fleet could be sure of finding adequate supplies of fuel is Hawaii and naval experts are authority for the statement that 2,000 miles represents the utmost distance to which the fleet could venture to the west or south of Hawaii in time of war. This is assuming the uselessness of either Guam or the Philippines as supply bases in the light of the naval limitation treaty. Article XIX of the naval treaty limiting fortifications in the western Pacific was put in the treaty by Japan as a condition for agreement. The significance of this is now realized by American naval experts for it has developed that Japan, in 1920-21, scenting the naval limitation treaty from afar, feverishly sped up her construction of fortifications on the Bonin Islands, Amami-Oshima and Yajima in the Loochoo group until they practically were completed by December 1921 just prior to the calling of the Washington Conference. All through this work the Japanese press was forbidden to mention what was in progress, and when Baron Kato proposed the limitation of fortifications clause he also failed to state that Japan had secretly completed her fortifications whereas practically no progress had been made on the American stations at Guam and Cavite because of the indifference of the American congress. Therefore, in the light of these factors, it is becoming evident in the United States that in pledging herself not to proceed with the fortifications of her islands in this part of the world America voluntarily surrendered not merely the power to defend these possessions, but the power to defend her interests in the Far East generally, no matter how vital they are or may become in the future.

THE situation therefore seems to be about this—and in this statement we believe that the American naval authorities on the Far Eastern situation are in agreement—the fortifications restrictions have served to give Japan absolute command of Asiatic waters, and a dominance of the Philippines, Guam, the East Indies and Australasia. This is the effect irrespective of whether armaments are limited or not, because as a battle fleet cannot operate beyond a radius of 2,000 miles from a major base, it follows that you can not operate at all beyond that radius no matter what the size of your fleet. Therefore, Japan was the only victor at Washington. Nothing but the moral forces of the world can stop her ultimate physical conquest of Hong Kong, the Philippines and Guam and from them the further conquest of Singapore, Dutch East Indies and Australasia unless some major naval base can be erected from which a battle fleet can be projected for the defense of the Philippines and Guam. If the Philippines and Guam can be

prevented from falling to Japan, she can never conquer Australasia and the Dutch insular possessions. As the matter now stands, the United States is impotent to save the Philippines and Guam from falling before a major operation by Japan. Therefore it may be assumed, that the United States is impotent to enforce her policies in Asiatic waters if it ever comes to the point where physical force becomes necessary for this enforcement. And, assuming this to be true, America's word might quite logically begin to progressively weaken. Great Britain sees this and seeing it, decides to build a strong naval base at Singapore where her fleet will be centered. Singapore is outside the territorial limits of the treaty area. By doing this Britain can not only prevent the Philippines and Guam from falling to Japan and can also save Australia and the Netherlands possessions from going to Japan, but on the other hand she also sees that in case of a war with the United States she could take the Philippines and Guam herself. This explains the reasons for the naval base at Singapore. It can be a great step forward in the future power and prestige of Great Britain and from the standpoint of the future relations of the United States and Great Britain it can be a menace or a boon according as the policies of the two countries tend toward cooperation or conflict.

THE signing of the naval limitation treaty by the United States was probably the greatest act of altruism and showing of good faith toward Japan that has ever actuated America in its relations with the nations of the Orient. Naval men who look only toward actualities and think in terms of hard facts of clashing economic interests, certainly entertain profound misgivings with regard to future developments in the Far East. They think America was carried away by her cracked-brained idealists and Japanese propagandists, many of them American citizens who believe, or are paid to say, that Japan is going to play the game. Only the future can tell what the result will be. That it tremendously increases the responsibilities of American efforts toward the rehabilitation of China and the encouragement of a strong independent republican form of government on the continent of Asia goes without saying. We quote a well known naval authority for the statement that "Wars are only a continuation of economic conflicts. Economic conflict is always present, either latent or active. Therefore war is always a possibility. It comes when peoples must break economic bonds that can not be otherwise broken." In China we have not only the economic conflict, but also the political conflict between those who believe in the American idea of government by and with the consent of the governed, otherwise *democracy*, or the government by superior armed military force as typified by Japanese autocracy or worse yet that new and terrible form of autocracy as represented by Soviet Russia.

AND thus we come logically to Alaska and President Harding's visit to that important territory of the United States. Alaska has a territory of 590,884 square miles or about twice the size of Manchuria or the American states of Illinois, Missouri, Iowa, Indiana, Minnesota and Wisconsin. A great deal of the area of Alaska is covered with ice and useless for economic purposes but much of the southern portion which is washed by the warm Japan current is capable of develop-

ment. There are untold resources of minerals such as iron, copper, coal and possibly petroleum which should be developed. A development of the resources of Alaska will provide the materials for an industrial and population development on the Pacific coast of the United States that ultimately may rival the eastern coast of America. The United States Government has already constructed a railway of several hundred miles in length which reaches the heart of the territory. Prospecting for coal, iron and petroleum have been going on, but nothing material has been accomplished owing to the unsatisfactory political status of the territory which has prevented the investment of private capital. Strategically Alaska is of acknowledged importance in the defense of American interests in the Pacific. The furthestmost of the Aleutian Islands belonging to the United States are only a few sailing hours from the most northern islands of Japan. An American fleet at Dutch Harbor, on one of the Aleutian group could prevent a Japanese fleet from ever sailing very far from Yokohama or Kobe. Although the Aleutian islands are included in the arms limitation agreement, the coast of Alaska is not and it abounds in good harbors. Therefore the present visit of President Harding to Alaska and the concentration of the attention of the American people upon this little known territory, is of very great significance. President Harding has performed a very great service in taking this trip to Alaska for he has shown the American people, how, through the development of that territory they may maintain their position in the Pacific, while at the same time giving Japan the fullest opportunity to show her good faith in maintaining the peace and even economic development of the Pacific.

ARE FOREIGNERS WORTH AS MUCH AS BANDIT CHIEFTAINS?

WHEN the foreign captives were released by the Chinese Bandits at Paozuku on June 13, the Chinese Government paid over to the bandits \$85,000 in actual cash and promised \$50,000 more, making a grand total of \$135,000. This sum of money was divided equally (presumably) among six of the leading bandit chieftains and constituted the ransom paid by the Government for the release of the foreigners. It figures out at \$22,500 for each of the robber leaders. Now, if we are to believe newspaper reports from Peking, the Diplomatic Body is planning to recommend that the Chinese Government reimburse each foreign captive on a per diem basis depending on the time spent in captivity, the greatest amount to be paid to any captive being from (Mex.) \$5,000 to \$8,500. Since many of the foreign captives were released on the first day or within two weeks, the average received by the foreigners will be quite small. The amount to be paid by the Chinese government for the murder of Mr. Rothman, according to report, is somewhere around \$10,000. If these newspaper reports regarding the contemplated action of the Diplomatic Body are true, then the Diplomatic Body is put in the unenviable position of placing a lower estimate upon the lives and bodies of their own foreign nationals in China than the Chinese Government itself placed upon them as indicated in the ransom money paid over to the bandits. Or to put it in another way, the bandit leaders got \$22,500 apiece out of the disgraceful affair, while the innocent foreigners who participated as victims and were forced to submit to the indignities of an armed gang of semi-civilized

robbers for periods ranging from one to 38 days are to receive less than the daily income of any one of a half dozen Chinese tuchuns we might mention. This, apparently, is another example of the retrogression of Western White Civilization in the Orient regarding which we have heard so much in recent years.

THE CHINESE BANKERS AND THE SHANGHAI MINT

VALUABLE machinery belonging to the new Chinese Government Mint at Shanghai has been rusting away on the dock at Shanghai for nearly a year at a monthly cost of \$20,000 for storage, insurance and interest because of the inability of the Chinese Government to complete the job, according to a statement of Mr. Clifford Hewitt, mint engineer for the government, printed elsewhere in this issue of the *Review*. The buildings located on Soochow creek in the outskirts of Shanghai, costing approximately \$2,000,000 have been ready for the installation of the machinery for many months. A detailed illustrated description of the new mint appeared in the Special Banking and Financial Issue of the *Review* on June 30 last. According to this article the new mint will have a capacity of \$1,000,000 standard Chinese silver dollars a day and if efficiently and honestly operated should be able in a short time to put China's metal currency on a sound basis. The mint when completed will be the largest and most modern in the world and although not yet in operation, it has already aroused much favorable comment in other countries. It is understood that plans are under consideration in India to model its new government mint on the one here. The reasons for the delay in the completion of the mint are not known, but it is presumed that they have their foundation in the unsettled political situation at Peking. Owing to the importance of this enterprise to the Chinese bankers of Shanghai it would seem that they should be able to exercise sufficient influence upon Peking to complete this institution which is vital to the commercial and financial stability of the republic.

Dr. Frank Crane on Tour of the Orient

"It is up to the women to rule and govern and to keep the house in order. Just as she sweeps and cleans her house, should she also help with the laws, take part in the government and be an inspiration for the finest and best in the world," is the idea of Dr. Frank Crane, one of America's noted journalists who is at present in Shanghai. Dr. Crane after touring in Japan and North China arrived in Shanghai on Wednesday, July 25, accompanied by Mrs. Crane, his daughter, Mrs. Daphne Drake, and nephew.

When asked regarding China's chaotic condition Dr. Crane said it was up to China to straighten out her difficulties herself and she should start at the bottom. No country can flourish when ruled by vermin and not until China rids herself of the infected officials and chooses a commission of business men to handle her affairs, will she even sense success in the slightest degree. A body of strong educated and interested men and women teachers from all countries should be chosen and brought to China to educate the teeming millions of people, from the lowest laborer to the highest official in whom they should instill truth and honesty, clean out the filth and stench of the narrow streets in the many cities, lift up the coolie from his low rank and make him interested in the progress of the country. These are a few things that can be done but won't be taken care of principally because no one cares and the few who do are in the minority, and therefore are absorbed by the masses.

"My travels in China and Japan have been equally enjoyed and if China can be cleaned of her impurity, all her own resources brought to the surface, and the returns enjoyed, no nation can be superior in value to the rest of the world and to its own people."

China a Victim of Shylocks

BY CHARLES DAILEY

WHEN Chang Ying Hua threw up his job as Finance Minister the other day, leaving but two members of the last Cabinet of Li Yuan-Hung, he said the game was hopeless. Some one, he remarked must find a way to bring the people of China to a realization of the direction in which the so-called republic was heading or the foreign nations would step in. Since the passing of Chang Ying-Hua the powers in control of what remains of a government in Peking have been looking about for a Finance Minister. It has been increasingly difficult to interest a man of real financial ability in such an office, and unless a man is a financial wizard he cannot hope to do otherwise than to become the same failure as those who have preceded him in the job.

After some looking about and many discussions the choice seemed to fall upon Wang Keh-Ming, President of the Bank of China. Mr. Wang said nay-nay several times, but the pressure was insistent. Finally, whether with his consent or not, he was nominated for the post of Acting Finance Minister by the rump of a Cabinet that sits in Peking, vice ministers being for the most part sitting around the council table. It is all of course, very illegal, but nothing is legal in China these days and the chances are the tenure of a Finance Minister would not be challenged if he was able to turn himself into a modern Herrmann and by waving his magic wand gather dollars from the air.

Mr. Wang was in a very dubious mood. Finally he was induced to start for Paotingfu and Loyang for a conference with Tsao Kun and Wu Pei-Fu. He had met Tsao, but not Wu. He had a considerable admiration for the latter and did not wish to take hold until he had formed the acquaintance of Wu Pei-Fu and obtained his approval of whatever plans he had in mind. Mr. Wang left Peking Monday and expected to be gone the better part of the week. It is known, by reason of their military requirements, that Tsao Kun and Wu Pei-Fu are great consumers of the public funds. Certain railway and other revenues are diverted for their benefit, and it is quite possible that Mr. Wang wanted to know beforehand just what revenues they were willing to free from their clutches in order that he might estimate how much money he could get his hands on, and having obtained it just how much these two warlords would require from him monthly. Mr. Wang seems to have an intensely practical mind, which is a vital asset to a banker. Marshal Tsao talked with him at length, but dissuaded him from seeing Wu Pei-Fu.

Chang Ying-Hua left an inheritance to his successor, whoever he may be, in the form of a balance sheet and a look into the future. He showed, for example, as already detailed in the *Review*, that the secured and unsecured debts of China, not counting a floating debt that no one has attempted to estimate, amount to \$1,891,780,028, including \$66,000,000 of defaulted interest. He saw no hope of China escaping bankruptcy. He remained on the job long enough to prepare a series of tables showing the helplessness of China's position, and in this he performed a good service.

But the tables prepared by Mr. Chang did not list all of China's indebtedness. The mere item of floating debt is an elastic and probably staggering one. Then there are the arrears of pay both in the civil and military divisions. Some of these arrears extend to eighteen months. At the time of the Dragon Boat festival, when Chang Ying-Hua decided the game was not worth the candle, it was necessary to go out into the highways and byways and to get money in dribs and dabs to tide over the period in order to avert strikes by the police and other necessary employees. Most of this money was obtained from shylocks at rates running as high as ten percent monthly. What the next rate will be no one can estimate.

As his valedictory Mr. Chang sharpened his pencil and compiled another table. This showed the outstanding unsecured loans, classified according to their rates of interest. These he computed on an annual basis. They do not include the loans made in June or various other sums amounting to millions gathered up here and there at any rate the lender was disposed to exact. But the list of loans he tabulated is as follows:

Interest per annum	Principal
5.6%	\$ 17,355,000
6 %	96,904,000
7 %	32,407,000
7.6%	36,000,000
8 %	207,153,000
9 %	2,775,000

10 %	9,836,000
12 %	5,097,000
14 %	1,508,000
15.6%	1,013,000
16.3%	47,000
18 %	15,642,000
19.2%	10,644,000
20.4%	793,000
21.6%	4,583,000
24%	400,000
76 %	97,000
No interest	42,271,000
Total	\$494,525,000

A footnote explains that some of these loans were made on a daily basis. Those without interest were chiefly overdrafts and like accommodations which it was expected to repay immediately, each Minister of Finance passing over a crucial period by emergency loans from friends. In due time interest will be exacted for these.

Chang Ying-Hua went out of office without making any recommendations as to the solution of China's problem. He admitted frankly that it was too much for him. In compiling even a partial list of the obligations he had done more than most of his predecessors. In all China no one seems to have any concrete idea of how the financial stability of the Middle Flowery Kingdom may be restored. Tsao Kun, the political boss of the Chihli party, under whose domination the crisis has been reached, although it had been in the making since long before the overthrow of the Manchu dynasty, admits he is not a financier, although he has accumulated great wealth in the years he has been in politics, yet far less than others who have had even less power.

When asked the other day for his views on the matter of the restoration of the national credit he replied: "I advocate the creation of a commission of representative Chinese to consider the nation's foreign and domestic debts, with a man at the head of it enjoying the confidence of both the foreigners and the Chinese. A sinking fund should be created and terms for the gradual extinction of the debt fixed. The country has abundant revenues, once they are restored to the proper channels."

Note one striking phrase in the expression of Tsao Kun. It is also the view of the Chinese as a whole: a commission of representative Chinese. Nothing will be so much opposed by the Chinese as the suggestion of a foreign commission, a joint commission or even the presence of a single foreigner on the commission. On this point the Chinese appear to be united. Many of the leading men will welcome foreign advice and voluntary assistance, but not one has expressed a willingness for foreign participation as coming from the initiative of the Powers.

It will be many months before China can make even a start toward financial rehabilitation. There will be political crises and possibly civil wars. Talk of foreign intervention and naval demonstrations—whatever the latter may mean—may alarm a few individual Chinese, but the masses know that it is too big a problem for any combination of powers to tackle and they will see it through in their own way. Even Japan has come to this conclusion and is the meekest of the meek these days.

China knows there can be no financial aid until a reorganization plan is worked out by the Chinese themselves. And until that point is reached the money-lenders of Shanghai and other Chinese cities will increase their interest charges to a point commensurate with the risks involved. They know their own people. China has untold resources; she is bankrupt but far from insolvent. And what she has she is going to keep for her own. The talk of foreign intervention will soon die down. There are breakers ahead for the Ship of State in China, but they will come from the Chinese and not from the foreigners. Wise businessmen in foreign countries have taken note of this. Two large concerns have closed important branches within a month. Some saw the handwriting on the wall and got from under as long as a year ago. China sometimes is said to be anti-foreign. She may seem to be anti-foreign at times. The truth is that she is pro-Chinese. She has absorbed everything that has come into it.

There are many troubles in store for Wang Keh-Ming, or whoever else accepts the thankless job of Finance Minister. The stockholders of the Bank of China appear to be much opposed to their director-general taking hold in the emergency. They are apprehensive that there might be increased issue of the notes of the bank for the purpose of paying the current expenses of the Peking government and that in the end they might be left to hold the bag. These stockholders went so far as to prepare a memorandum begging Mr. Wang not to

enter the Finance Ministry saying that in such event the branches and agencies might sever their connection with the head bank. The Shanghai branch was particularly insistent. It had been currently reported that the forces still trying to control the Peking government contemplated the issuance of \$6,000,000 of Bank of China notes to finance the presidential election and this is what excited the stockholders. According to the *Chen Pao* the bank already has a deficit of some \$30,000,000 (perhaps this means an issue of circulation rather than an actual deficit) and for that reason Mr. Wang was urged not to accept the office tendered him.

Whoever does take the job would do well to listen to the swan song of Chang Ying-Hua. He says that a permanent constructive plan must be outlined and followed. He believed that if Wang Keh-Ming assumed the office of Finance Minister and remained in the office long enough he would use his rich financial experience to put the government on a sound basis. Mr. Chang said his own brief tenure had taught him that a Minister of Finance must have a reasonably long period of service if he expected to accomplish anything of a really constructive nature. He thought a way out lay in the readjustment of foreign and domestic loans, but offered no concrete suggestion, nor was his idea new.

Mr. Wang labored under no illusions. That is why he wanted to pin the military leaders down in the matter of their requirements and to compel them to keep hands off the revenues if his office was to supply the funds for the upkeep of their armies. It is generally estimated that the expenses of the Peking government are about \$8,000,000 monthly and the revenues in the neighborhood of \$3,000,000 leaving a monthly deficit of \$5,000,000 a sum sufficient to discourage almost any financial man. Mr. Wang did a little figuring of his own and came almost to the same conclusion. He said in an interview in the *Ti Shih Pao*:

"If I accept the office of Finance Minister it will be on the condition that I shall be responsible for raising only such amount of funds as are sufficient to cover two months' pay for the police and soldiers of the Metropolis. I shall do so much and nothing more." He estimated that he would require to raise \$5,000,000. In this Mr. Wang made it clear that no constructive work could be expected of him and that he would be only a stop-gap. But he did offer a suggestion which if he is unable to follow may at least be of value to whoever actually takes hold of the office.

"I shall issue no more revenue stamps," he is quoted in the same interview, "because there are already too many issued by the government. It is estimated that the total amount of proceeds collected from this source is \$3,000,000 a year, but the amount of such stamps issued by the government in the last few months has amounted already to \$10,000,000."

That is an instance of the reckless financing to which China has been driven. She has mortgaged her prosperity for three years in advance to cover the requirements of a few months. Mr. Wang had also another helpful suggestion. He said there were many superfluous jobs in the Finance Ministry and that great economies were possible there. When Tung Kang was Finance Minister last summer the monthly expense of the Ministry was \$80,000, but now it has swollen to \$240,000. He said about 900 officials have been appointed to sinecures since the days of Tung Kang and that every one of these was an unnecessary employee.

What is true of the Finance Ministry is true also of most of the other departments of the government. Parliament also is a heavy drain on the exchequer. It is drawing high pay and higher allowances for doing nothing. Given a business administration, calling off the expensive and wholly fruitless military expeditions into Szechwan and Kwantung, stopping graft and waste in innumerable places and the groundwork will be laid for financial reform, and through it for the regeneration of the machinery of government. The mints are running wild with subsidiary coinage and these coins, once on a parity with the dollar, are now subject to a discount of 10 percent. It is rich pickings for the money-changer. But he is only a piker compared with the banker shylocks who are taking advantage of China's extremity. In many ways they are not to be blamed. The risk in advancing money is very great and they are perhaps justified in exacting a usurious return. Chang Ying-Hua pointed out that some of the loans have been made on a daily interest basis. That they run as high as 120 percent a year he has shown. Mr. Wang has been checking up on the inheritance left by Mr. Chang. He may accept the office; more likely he will not. If he does accept he will feel like the backwoodsman down in Maine in the days when it was a Prohibition state, but in the absence of a national law the regulation was loosely enforced. The woodsman remarked to a comrade: "Well, Bill, I am down to Bangor to get drunk, and gosh, how I dread it!"

Peking, July 21.

Far Eastern Thought on the Proposed Naval Base at Singapore

BY H. P. SHASTRI

THE news of the establishment of a naval base at Singapore has come as a great disturbing element in the realm of the politics of the Far East. Indeed this enigma is hard to solve, and those who attribute British imperialistic motives to it can not be called entirely unreasonable. The bill for an extension of the naval base passed the House of Commons by a majority of over 150 votes after extremely hot debates during the course of which strange and extraordinary statements were made in the Parliament.

In face of the serious unemployment question and unsatisfactory financial condition of Britain the vote for enormous expenditure on the proposed naval base is hard to understand. Nobody will admit that the Empire is in any immediate external danger. Again, why should Britain think of this defensive measure soon after the termination of the Anglo-Japanese alliance? Let us examine briefly what Japan, China, United States, and India think of the matter.

In the nationalist circle of India where the gospel of non-violent non-cooperation of Mahatma Gandhi is being strictly adhered to the news of the naval base has caused serious alarms. In a leading article *Swarajya*, the premier national paper, views the proposal with serious apprehension, and is unable to understand the use of it unless it is meant to serve the imperialistic policy of Britain. *The Nation* of Lahore is much disturbed at the news and thinks that British imperialism is on a forward move.

The Chinese are too busy with their own affairs to attend this problem, and those who are in a mood to think of it are in a dilemma. The Young China hints that it is a move against Japan. Japan views the problem with serious apprehension. We have followed the parliamentary debates on the question carefully, and in regard to its bearing on Japan, "references were delicately made, Commander C. Bellairs going so far as to refer to the possible use of Singapore to the United States, and giving undisguised utterance to sentiments intended to make a favourable impression on America." The Japanese admit that there can be no technical objection to the extension of the base. Singapore being a peninsula does not come within the provisos of the Quadruple Treaty which applies to possessions and territories that are entirely insular. But as a matter of fact Singapore is an island. Technically speaking the extension of the naval base is not an infringement of Act 8 of the Covenant of the League of Nations. But it is on grounds other than these that the Japanese object to it. The *Yomiuri*, a Liberal and very sober organ of Tokyo, sums up the feelings of Japan in the connection as follows:—

A MEASURE OF FAR-REACHING CONSEQUENCES

"Whether the Alliance is continued or not, there ought to be peaceful means to preserve and increase the mutual dependence on their respective goodwill between Britain and Japan. Apart from the peculiar international relations which subsist between the two nations, Japan is under joint liability with Britain, as one of the three or five Great Powers, to maintain the peace of the world which is the principal object of the Washington Conference. This Conference was convened mainly on the motion of Britain, and of the League of Nations of which Britain is now almost the only pillar, though other nations also were interested in its organization. Japan, therefore, cannot but view with great regret the action of the Conservative and Imperialist politicians and diplomats of Britain, who are for carrying through a bill for an extension of a naval base, which indeed does not infringe the letter of various treaties of which Britain is a signatory, but infringes their fundamental spirit, and is calculated to lead to serious practical consequences, by affecting the maintenance of the peace of the world—more especially by shaking and destroying the foundations on which good will between Britain and Japan can be maintained despite the abrogation of the Alliance. If France (for instance) should take it into her head to build a naval base in Kamranh Bay on the pretext of this proposed action of Britain, the Far Eastern nations will be confronted with a serious problem to ponder over.

Private conversations with some responsible Japanese on the matter have given us to understand that although there is a general lack of interest in the matter in Japan, those who are responsible for the defence of the Island Empire are confronted with a real problem in which they

read some hidden motives. It is plain that when Japan does not view the defence of Hongkong with much favour, she will not think lightly of the extension of the base at Singapore. They say that Britain has ignored the good will of Japan by taking this step, knowing as they do that it cannot be to the liking of Japan.

Those of the Japanese who are not politicians by profession, but who have considerable influence over the masses state that this step by Britain is a materialization of the Anglo-American combination against Japan in the future. We also understand that the desire of Japan to seek an alliance with Russia, whom she hated so much on account of her Red politics, only a few months ago, and Germany is secretly inspired by this Imperialist and Militarist action of Britain, to keep a balance of power in the Pacific.

There is general indifference to the problem of the extension of the naval base at Singapore in America. The following quoted by the Indian organ *Swarasana* will give some clue to the feelings of America in the matter as understood by India.

THE SINGAPORE BASE

The following trenchant comment appears in the *New Republic* :—

"Jingoism apparently reaches its supreme heights in the navy. In Great Britain the admiralty has just succeeded in getting \$55,000,000 to build a huge naval base at Singapore. This is necessary, says Lieutenant-Colonel Amery, in order that Great Britain may have command of all the seas: which is just exactly what she is not supposed to have, under the terms of the Washington treaty. Lieutenant-Colonel Amery deplores the fact that the empire is 'helpless and reliant on the good will of a friendly and lately allied power.' At the same time he insists that Great Britain does not contemplate danger from, or even strained relations with 'Japan or any other great power.' Any one who can get any sense out of these two statements is subject to congratulations for his perspicacity.

When Will China Have Her Next Government?

BY PETER S. JOWE

THE last government of China, the one under Li Yuan-hung, was put out of business by a group of selfish officials occupying Ministerial offices in Peking. The flight of the weak Chief Executive from the Presidential Palace which was surrounded by threatening troops to his private residence in a Foreign Concession in Tientsin for personal safety marks the complete collapse of any administrative or governing power in our nation of 400,000,000 people. Under military intimidation and coercion heightened by the presumptuous attitude of the well-known Christian General Feng Yu-hsiang, President Li was forced to walk the plank under most disgracing circumstances.

While it appears to be most detestable that a President should give up his post simply on account of the fact that a few Cabinet Ministers desire to have a new man more handy to their own interests, there is nothing in it, for Li Yuan-hung had the same experience once before when he got into trouble with Tuan Chi-jui's men. What is really tragical is that China has in fact lost her government.

Since July 13 China has had no government. What the foreign Powers have to refer to in dealing with China is the Waichiaopu in which there is only a Vice Minister of Foreign Affairs. And what China has for government so far as internal affairs is concerned is the same group of conspirators who are auctioning the Presidential seat to the highest bidder. Now a government of some sort is indispensable for any nation. It is more so for China considering her most desperate plight today. The question now being asked by those interested in the well-being of China is: "When Will China Have Her Next Government?"

To this question various answers may be advanced, but the only thing that will bring about a real government, when one takes into consideration the history of China for the last dozen years, is the active supervision of national affairs by the merchant and enlightened classes of the people. In other words, before the people are strong enough to assume leadership and direction of national affairs the merchants must effectually assert their rights and oppose misrule by the privileged few. Unless this is done all talk about stabilizing China is futile.

Popular sentiment about national affairs has been so inarticulate that in spite of the many chances China has had during the past few years of taking the place that she ought

to take as a leading nation of the Far East, she remains today a nation depending for its existence on the compassion of foreign Powers. Such a state of a governmentless country as exists in China today would not have been possible, if the merchants, bankers and educated classes had made organized efforts in the public interest.

There is a large body of observers who believe that China's troubles are purely political and must be worked out through political ways. For instance statements like these are often heard. "What China needs is a strong man who can command the obedience of the Tsuchuns and military commanders." This view is often expressed, especially by foreigners. "Not until such time as China is under the control of a dictator, will peace and order be established in the country." We might as well say that a dictator will give China a government as to say that a doctor alone will cure a disease. In the first place a dictator with strength enough to be respected by the lesser magnates cannot become such overnight. The country would have to go through terrible bloodshedding before a dictator could come into being. On the other hand, a dictator functioning as the head of a *de facto* government in an unsettled country like China would be the occasion for endless warring and eventual dismemberment. China has had several candidates for dictatorship. Wu Pei-fu was a few years ago on the highway to such a position; but political dissensions blighted the career of the promising general. Now admitting that a man like Wu Pei-fu actually assumed the reins of the government in a dictatorial position, does it not follow that before he could stabilize the country, the nation would be split by factions and rivalry and warfare.

The next argument for suggestive measures is this. China has not yet adopted her formal constitution. Therefore the mechanism of her government is not perfect. It is like a company trying to operate without a charter. This is a principal reason for her inability to arrive at a better form of government than that which exists in the empty old city of Peking with a few scheming politicians and shabby statesmen whose voices are never heard outside the city walls. If that were the only cure for a governmentless China, it should be a simple matter for a government to be organized. The thing to do would be to gather a Parliament from the provinces with good pay, and let that body pass a nicely preambled and highly-worded Constitution for the country. Would things glide on smoothly from the moment this is given China? Or would the presumptuous and overbearing authorities of the provinces respect such an instrument as inviolable, just because it has the name of Constitution? This pedantic principle of government has beyond doubt proved to be a failure in China. We have more than enough instances already on record where Presidents and cabinets have openly violated the sworn oaths made under the Provisional Constitution of China when they were sworn in. Will a formal Constitution stand a better chance of being respected?

The personnel of those constituting the government of China has everything to do with the character of government which China ultimately adopts. If China could throw off her neck the mill-stone of the old and traditionally corrupt order of officials, she would be better off. It is these misfits who have led the country to the verge of ruin. If China could only get rid of them and replace them with men with modern educations, and patriotism, there would be no such things as misgovernment, corruption, chaos and military commotions. This idea is shared more and more by Chinese critics. It is shown by this incident. When Dr. David Z. T. Yui was lecturing before a group of merchants and leaders in Hankow upon his return from the Washington Conference on Disarmaments, he asked this question during the course of his address, urging a wide-awake public sentiment in China. He carried the whole audience with him in the argument that the present day militarists should be all eliminated and their places given to better men. When he questioned the audience the whole house responded with a unanimous "yes." When he asked further: "Now if the new men in the vacated positions turn out to be just as bad or even worse, should they be killed and replaced?" Before his listeners had the chance to answer, he humorously concluded that the killing process of elimination would in no time reduce China's huge population to nothing. It is not a question whether one group of men is in power or the other. What is important is whether or not the mass of intelligent people of China are awake to the situation. Some may prefer to have Sun Yat-sen because he is democratic, others may like Tuan Chi-jui because he is more capable. Still others would suggest Wu Pei-fu, or Chang Tso-lin, or Li Yuan-hung, or Tsao Kun, or other men in the political eye. But what would they bring to the country, in addition to their individual abilities and merits, if the destinies of the country were placed in their hands?

The most critical issue that the people of China are fearing in their anxiety about their government is foreign intervention. This is a question deserving the most serious consideration. There is a section of the Chinese people who resent the corruption and incompetence of government officials and who openly admit that foreign intervention may be beneficial to China to give the country the stability it needs. They even admit that foreign intervention is the only measure that will rescue China from the danger now facing the land.

Whether this view is right or wrong, it is not the purpose of the writer to discuss in this article. Let those Chinese who expect foreign intervention to rid the country of its chaos give up this weak idea. Foreign intervention will not be able to give China a well-organized government for this reason. The foreign governments, while they may take every possible measure to protect their interests and investments in China, certainly will not think of giving the Chinese people a government that will do them justice and bring benefit to the country. This would not be their chief interest. Very little benefit can be expected from this seemingly simple method for stabilizing China.

China's success in working out a government does not depend upon who is the President of China, who composes the Cabinet, or what kind of Constitution she may secure, nor does it have anything to do with the steps that foreign Powers are going to take with respect to China. Conditions in the country would remain invariably the same, so long as the people hold aloof and are satisfied with their position of shameful subordination. One president or Cabinet may be better than the other, but all prospects for improvement of conditions based on changes of personnel are ephemeral. Unless the people are ready to make sacrifices and take part in politics, there is but one chance for China, namely, continual deterioration and collapse.

It may appear that the efficacy of merchants and the educated classes in China is of doubtful usefulness, so far as their ability to supervise government affairs is concerned. But let it be remembered that there is now in China a Chamber of Commerce in every *hien* of any size where there is a small group of rural merchants. If the national association of Chambers would take effective steps to perfect a strong national organization, the voice of the merchants would surely be heard. Besides, in all big ports there are other civic organizations. The influence of these chambers and organizations cannot be overestimated, and the best illustration of their strength is furnished by the anti-Japanese boycott now so effectively instituted against Japanese merchants. It is not whether they can or cannot; the whole question hinges upon whether they will or not.

Hankow, July 21, 1923.

The Chinese Church 1922 National Christian Conference

From May 2 to 11 in 1922 the most important Christian conference ever assembled in China and one of really significant import to the Christian world at large was held in Shanghai. A complete report of the conference has with great labor been edited by Reverend F. Rawlinson, D. D. (chairman), Miss Helen Thoburn, and Reverend D. MacGillivray, D. D., LL. D. and published by the Oriental Press of Shanghai. The volume contains over 700 pages, and is neatly bound in cloth.

The editorial committee compiled the book around the five commission reports submitted to the conference. As stated in the preface, "the thinking of the conference revolved around these five reports," so that the discussion of each report by the delegates follows the report itself without regard to the chronological order in which it came up in the conference. The five commission reports were: The Present State of Christianity in China, The Future Task of the Church, The Message of the Church, Leadership, and Coordination and Cooperation.

Included in the contents are lists of the officers and committees and all the delegates to the conference, the latter numbering over 1100. In addition are the opening and closing addresses, various reports other than the commission reports and the resolutions of the conference.

While the book will be of special interest to those engaged in or supporting missionary work in China, it may well be of interest to any thinking person, for the reports are regarding a vast movement which is bound to effect the entire Chinese people, and thereby not only people doing business in or with China but, in the present day of closely related international economics, everyone, indirectly.

The book is placed on sale at the price of Mex. \$4.00 net in China or Gold \$2.50, net, postpaid to foreign countries, by the Oriental Press, Shanghai.

The Uncompleted Shanghai Mint

CLIFFORD Hewitt, engineer for the Chinese Government Mint at Shanghai, declared that a large quantity of delicate and valuable minting machinery has been laying on the dock in Shanghai for nearly a year, because of the inability of the Chinese government to pay for the machinery and that it is costing the government \$20,000 a month for storage, insurance and interest charges.

Mr. Hewitt's statement was made in Tientsin on Tuesday evening, July 16, at a dinner given by Chang Yin Hua, former Minister of Finance and Chu Yu Chi, managing director of the Shanghai Mint. The dinner was given at the home of Pan Fu, former minister of finance in Tientsin. Those present in addition to the above were: Li Shih Hao, former minister of finance; Chang Hu, former minister of finance; Tsao Ju-ling, also former minister of finance; Wang Meng-Chung, manager of the China South Seas Bank; Lu Chung Yu, manager of the Exchange Bank of China; General Chen Kwang-yu, former military governor of Kiangsi province; Dr. Wang Chu-chang, secretary of the Shanghai Mint and Wang Kuei-shou, director of the Tientsin Mint.

The principal subject discussed was that of currency reform and in this connection Mr. Hewitt gave an address dealing with the status of the Shanghai mint. Mr. Hewitt's address in part follows:

"In planning the construction of a mint, one is faced with the usual fundamental problems—that is—its productive power, quality of material used and its duration. In other words, it is like building a home. You can spend \$15,000 and build a home, or you can easily spend \$150,000 in a very conservative way. The same applies to the construction of a mint. In my engineering field I have built mints where the cost of construction amounted to Gold \$3,000,000 and others at a cost of Gold \$500,000. The Mint that is being constructed at the present time in Shanghai when completed will not only be a credit to the Chinese people, but it will stand as a rock foundation to the future financial system of China.

"A Mint's responsibility does not consist in just coining money, for this work can be accomplished by any cheaply equipped factory. The important factor of a government mint is to keep the legal standardization of weight and fineness of its coinage. A mint to perform fully and accurately its duty must naturally be equipped accordingly, for the least defect in either the melting, rolling, coining or weighing equipment may easily result in a big loss or a gain to the government and a loss to the merchants. But the loss or the gain on any one side is not so important as the fact that the mint is one day turning out coins of a certain fineness and weight, while another day it turns out the same kind of coins of a different weight and fineness. What disastrous effect this incorrect coinage system might have on the financial system is, nevertheless, the harm created and gradually felt by the Chinese merchants. It is quite natural it should be so, for if the government profits by incorrect coinage the merchants naturally lose. The merchants cannot always lose without noticing it and will take steps to protect themselves against such losses by placing their own value on the respective coins and paying no attention to the standard as claimed by the mint, thereby causing very frequently a panic in the financial system and creating general mistrust.

"The mint which is being constructed will have a minimum daily capacity of 500,000 silver dollars per day of 10 hours, or a maximum output of 1,000,000 silver dollars. It may seem to an outsider that too much money has been spent on machinery, but in reality the machinery purchased is not only the best and most accurate but will eventually prove itself quite cheap, for the reason that it is practically automatic.

"I will not trouble you with the numerous technical details but I wish to give you one example which will illustrate the point, the fact that the machinery purchased is most economical—take the melting department. We are going to use gas for melting purposes whereas the other mints in China use coke or coal. By using gas we decrease the cost of melting and also decrease the loss of silver which is usually the case where melting is done by coke or coal.

"While the initial cost of the gas system is naturally higher than the coke or coal system, yet the expense in operation will show a saving of at least 30 percent, and thereby after one year's operation will not only reduce the initial cost of the gas system in comparison with coke or coal, but eventually will pay for itself from its daily savings. So far we have spent approximately \$2,000,000 Mex. dollars and from a technical point of view the Chinese people have received their money's worth and a little more.

"All money so far spent has been in every case with most careful consideration and the keynote has always been quality first, for in quality you are bound to get value. The buildings are entirely completed, all plumbing, heating and wiring has been installed. Power and gas producer plants have been installed and are ready for final tests. All this work is of the best quality and of modern installation. It will stand most careful technical inspection and thorough investigation.

"From a technical point of view China has received good value for the money so far spent. At the present time there is an urgent necessity of additional funds to complete the work and put this mint into full operation without further delay.

"The complete delicate minting plant machinery has been lying on the dock in Shanghai, exposed to the weather, for nearly a year, and if this delicate machinery is permitted to remain on the docks any longer it will practically be ruined. In addition to the danger of the machinery being ruined, it is costing \$20,000 per month for storage, insurance and interest charges, which to my mind is an absolute waste. If immediate steps are taken to permit me to carry on with the work, the mint could be put into full operation in less than six months.

"A detailed report of our past operations and present requirements has been handed to my superiors and a copy of same with permission has been handed to the following interested parties—Bureau of Currency and Chinese Bankers' Association.

"I wish to take this opportunity to express high appreciation for the full co-operation and untiring assistance given to me at all times by the various directors who have had charge of the mint during my time. The kind treatment and consideration which I have received from past and present directors has made my life and work in China a pleasure. For this, Gentlemen, I beg you to accept my sincere thanks."

American Policy Toward China

From the North-China Star (American)

What is the real attitude of the Washington government toward China at the present time is stated most authoritatively in the United Press cable from Washington which we publish today on our first page. The Harding Administration is unalterably opposed to anything resembling intervention even to the extent of increasing foreign control of China's railways, and Washington opposes this on the ground that it would be detrimental to American interests in China and to the interests of the Chinese themselves. The cabled propaganda reaching China from some other capitals is denounced in Washington as far as it purports to give America's attitude on the present problems in this country.

America called the Washington Conference; America signed in full and good faith the agreements reached there; and America is going to stand by those agreements as her pledged word. America is in favor of an efficient railroad guard in China to protect foreign as well as Chinese interests but she favors the organization of such a guard by the Chinese themselves and will be in no sense a party to any attempt to further extend foreign control over China's railways. These facts were definitely determined some time ago but it is only now that they have been made public through one of America's largest news services.

It is unfortunate for us here in China that so much propaganda material is being served up almost daily by cables from other capitals but the public, both foreign and Chinese, have become fairly well accustomed to take these messages with many grains of salt. It may be interesting and is certainly amusing to know what the diplomatic correspondent of the *Daily Telegraph* in London has to say on America's policy toward China in a few weeks from now when the whole world, or at least all in the world who are at all interested, know the facts. We shall, space permitting, reproduce a few of these cables in a "Lest We Forget" column as an excellent example of the danger of being too positive or too careless in trying to enlighten the world from London on conditions here in China and on the attitude of Washington toward them.

The public has, at times, short memory but daily, telegraph, diplomatic or other correspondents ought to go slowly in talking about "concrete" monuments to "American, British and Japanese solidarity." The only condition under which there will be anything like American and Japanese "solidarity" here in China is when Japan, like the United States, makes up her mind to carry out to the letter and in absolute good faith, the Washington Conference agreements.

There may be many out here who sincerely believe that the Washington Conference agreements were a mistake but there will soon be no one who is not thoroughly convinced, even though against his will, that as far as the administration in Washington is concerned the Washington Conference Conventions stay put.

A New Point of View

From the Herald of Asia (Japanese).

An interesting consequence of the Lincheng bandit outrage, the political turmoil existing in Peking, and the rest of the varied and numerous troubles with which China finds herself confronted, has been the entire change of attitude of the western world in respect to its views on Far Eastern affairs. In the past these have been based mainly on sentiment, the goodnatured sympathy for the "under dog," on which China has traded cleverly for many years. Even those who talked the most about affairs of this part of the world, had but extremely shadowy knowledge of what they were trying to talk about, and finally it became quite generally accepted abroad, especially in the United States, that China was a weak, but deserving country which must be protected against the sinister ambitions of a militaristic Japan. The events of the last few months have changed all that with an almost amazing completeness. The foreign powers are all irritated at China, angry at the selfish and unpatriotic attitude of her politicians and tuchuns, impatient with the people who suffer continuance of utterly impossible conditions with a patience which has ceased to be a virtue. Even China's best friends of the past are disgusted, feeling the sense of shame which comes from having backed the claims of some entirely undeserving person

Administration of Criminal Justice in Ancient China

BY C. F. KO.

(Representative authorities: *Shu King*, Vol. I, *A Chinese-English Dictionary*, by Dr. H. A. Giles; *Tung Chi*, Vols. I and II; *Cheng Tung Ku Chin Tu Shu Chi Ch'eng*, particularly the chapters on *T'ao-t'ang Shih*; *Wan Hsueh Tung Kau*, Vol. 192; *Confucius on Lung yi*; *Mencius on Wan Chang*; *Shu Yuan*; *Tung Ch'eng*; and the *Code of Hammurabi*.)

THIRTY centuries * previous to the Christian Era the administration of criminal justice, with all its legal notions, made its first appearance in China, which has since become the very cornerstone of modern criminal jurisprudence; for, after all, the ancient as well as the modern legal philosophy has its basis upon the moral precepts which reason itself teaches, and the foundation of which is imprinted upon the heart of every human being. Human nature is common to all peoples and to all ages; the universal maxim of "do good, avoid evil" was as much a precept in the Dark Ages as it is a golden rule in modern times. It is known to the natives inhabiting the very heart of the African Continent, as much as it is known to the most enlightened men in the modern world. When in this frame of mind we approach the subject we can not doubt that the fundamental juristic concepts of the ancient legal mind have formed the bones and sinews of modern juristic achievement. The law may develop through different systems and come under the influence of constant legal evolution, but upon final analysis they are marked with the same spirit and strive towards the same common end. Hence, the different theories of law-making, whether metaphysical-historical, or utilitarian-analytical, or positivist-sociological, have all come to the same end, for they are governed by the same eternal and immutable moral rules which are the basic principles of all juristic ideas. Therefore, there is no need to wonder that the legal notions, existing some forty-nine centuries ago in China, have unconsciously become the stepping-stones on which modern jurisprudence rests its stronghold.

China does not claim that its legal system is the origin of all juristic thought, for the fundamental legal precepts are universal in their character and common to all human minds; but due regard should be given to the ancient legal principles

* "The Age of the Five Rulers" covers the period from 2953 to 2205 B. C. The name of this period has been disputed by historians; some call it the "Age of the Three Kings" and others the "Age of the Five Rulers" and still a third class considers the period both to embrace "The Age of the Three Kings" and that of the "Five Rulers." However, this is a matter of personal disagreement, there being no variance of opinion with reference to the historical facts. This theme is limited to that part of the history concerning the administration of Criminal Justice and, therefore, what is described in this paper is viewed from the standpoint of penal law.

of China, to the same extent as the Roman Law is credited as being the source of juristic ideas. If comparative jurisprudence were of any use to the development of juristic activity today, then the Chinese legal system should be given the leading role, not only because of its pre-eminent character, but also because of its seniority. With Judge Lobingier, an eminent author on Roman Law and a refined scholar of Chinese Jurisprudence, we assert that when the civilization of China had already attained a high stage of development, that of Rome was still in its infancy.

THE CRIMINAL JURISPRUDENCE

Turning now to the main topic of this theme, we shall consider the rules of pardon and penalty, their origin and influence, and the functionary to whom the administration of penal law was entrusted. Originally, the different departments of the government were named after the names of the four seasons, viz., Spring, Summer, Autumn and Winter, and later, after the names of the four directions, viz., East, West, North and South. The method of giving a name to each department was done in a very logical manner, according to the character of the work pertaining to each office so as to conform with the peculiar characteristics of each season, or direction; as for example, Spring is a season of growth, hence the name for the department of Agriculture; Winter is a season of death, hence it became the name for the War Department; and so the Judiciary was sometimes known as "North wind" and "West fire" to show that justice would be administered strictly, as the north wind blew hard, just as the west fire was extended rapidly by the influence of the strong wind from the west.

The judicial system was first established in China by Fuh-shih in the middle of the Thirtieth Century, B. C. The Judiciary, as explained above, was called the "Autumn Office" to signify that it was a season of decay, and so the Judiciary was the instrumentality established for the destruction of the evil. In the Twenty-ninth Century, B. C., Shen-nung Shih, the ruler of the time, changed its name to "West Fire" denoting the stern character of the judicial function. Then, towards the end of the Twenty-seventh Century, B. C., Huang Ti called the Judiciary "North Wind" to symbolize the majestic figure of Justice. In the latter part of the Twenty-sixth Century, B. C., Chin-tien Shih used the owl as a symbol of the Judicial Department to demonstrate that a judge was supposed to be sightless for he was to know no friend nor foe, when he occupied the seat of Justice, and to indicate that the fierce figure of the bird represented Justice, which would deal severely with the offenders of the law. At different periods, Justice was symbolized with different objects, such as flood, dragon, eagle, and so forth, to illustrate the unrelenting character of Justice, and the harsh manner in which the transgressor of the law would be dealt with.

Thus far, history only records the full account of the establishment of the Judiciary; no mention being made with reference to the nature of penalty. But the ancient documents carry full record with regard to the description of the common life of the people, and this, as will be seen, sufficiently explains the reason for the non-use of any penalty. Thus, the historical accounts show that the people of that time were law-abiding; that punishment was lenient; and that the prison was entirely devoid of all persons. From this we can logically infer that there was punishment by imprisonment, because otherwise there would have been no use for the existence of a prison if penalties were not inflicted on those who transgressed the laws.

During the reign of T'ao-t'ang Shih, who ascended to the throne in 2357 B. C., the rules of penalty and pardon were first introduced into use. It was recorded that these rules were made in the 76th year of his reign under the authorship of Shun who was then the Prime Minister-Regent. It may be worth-while to give a short description about the able regency of Shun and how he became the next ruler after the death of T'ao-t'ang Shih. During the later part of his reign, T'ao-t'ang Shih retired from active service but occupied the throne nominally. The whole governmental rein was turned over to Shun who acted as Regent. For twenty-eight long years he ran the government in this capacity. Previous to the death of T'ao-t'ang Shih, he was offered the throne, but he declined it with the assignment of no other reason than following a purely modest custom of China, by stating that he was not virtuous enough to become a ruler. He preferred to be a Regent rather than a King out of respect for his master. About four years after the death of T'ao-t'ang Shih, he ascended the throne in conformity with the demand of popular desire. Thus, we have seen that T'ao-t'ang Shih ordered Shun to ordain the regular rules of punishment; so, it may be safely said that Shun was the father of Chinese criminal jurisprudence, although we do not mean to disregard altogether the credit due to the earlier rulers who had also prescribed certain rules of penalty.

But on account of the unascertainable nature of the earlier penal law we are inclined to presume that Shun, acting under the authority of T'ao-t'ang Shih, originated the regular systems of penal law.

The penalty was classified into afflictive and light. We shall take up each separately. The afflictive penalty, popularly known as the Five Penalties had the following scales: 1. Branding on the face. 2. Mutilation or lopping off of the nose. 3. Cutting off the feet or removing the knee-pan. 4. Castration. 5. Capital Punishment. This classification has since become the model of the Chinese criminal law with regard to graduating the degree of penalty, although the nature of punishment has from time to time changed. Thus, in the Dynasty of Sui (589-618 A. D.), the Five Penalties were revised as follows: 1. Flogging with light rod. 2. Flogging with heavy rod. 3. Banishment. 4. Exile. 5. Death Penalty. The scale has undergone several changes until today the Five Penalties are as follows: 1. Fine. 2. Imprisonment. 3. Banishment. 4. Perpetual banishment. 5. Capital Punishment.

Generally speaking, there were three places where the penalties were to be inflicted. Government officials were to be punished in the Court before their brother officers; scholars or people of the educated class were to be punished in the market-place; and grave penalties were to be inflicted in the open-field. This was only the general rule and there were various other places where divers other penalties were to be inflicted according to the particular nature of the crime committed and the penalty imposed. As we have seen, the aim of this general rule with regard to the place for the infliction of penalty was to impose, at the same time, public censure and public ridicule.

Death penalty was to be executed in the open-field. Castration was to be performed in a secret apartment, probably to avoid scandal. The branding on the face; the clipping off the nose; and the cutting off the feet; were to be inflicted under the roof or indoors, so that the wound should not be infected by the wind, which might finally cause death. The reason for this protection is clear; it was explained that inasmuch as they were not death penalties no loss of life should be occasioned therefrom.

Having described the nature of different penalties we now turn to consider the probable reason for the prescription of such particular punishments. In general, we may say that to prescribe a particular penalty is a matter of social adaptation; in other words, the various penalties were different modes of rationalizing the juristic desires of the time, growing out of the pressure of the prevailing custom. The prescription of penalty is therefore a matter of psychology; whatever current belief considers to be a frightful thing may be imposed as a penalty, for one of the aims of penal law is Prevention. The precise reason for the imposition of the death penalty is common to all criminal jurisprudence and therefore requires no special explanation, because there is no particular characteristics attached to the penalty. The probable reason for cutting out the genital organs was to deprive the criminal of his power of reproduction. There was good reason for inflicting this penalty because the Ancient Chinese believed that no man or woman could be more miserable than being without an heir. This custom may be traced directly from the philosophy of Confucius who said: "There are three ways of being unfilial, and without an heir is the greatest of them all." In this connection, it may be well stated that this custom is, to a certain extent, responsible for the growth of the big population in China. But it should be understood, however, that this custom only encouraged marriage to prevent possible corruption arising from single life, and it did not, in any way serve as a means for the sanctioning of illegal marital relations.

The cutting off of the feet was probably done to prevent further doing of mischief by the criminal. The lopping off of the nose and the branding on the face, were to expose the crime of the offender to the public so that the people might not associate with him, leaving with him the everlasting mark of disgrace and shame. Surely this mode of public censure is the bitterest of all the punishments, especially among the Chinese people, because this deep sense of morality and virtue forms the foundation of their life. Perhaps this is the most effective method for preventing further commission of crime, for logically, the people must have taken great precaution upon the approach of those marked with the stains of crime.

Coming now to the lighter penalties we shall first consider their nature and then their application. They were: 1. Substitution of banishment for corporal penalties. 2. Whipping. 3. Birch-rod. 4. Fine. By substitution of banishment for corporal penalties, it should be understood that the penalties so substituted were those of the five afflictive penalties above described. This substitution could be invoked by five classes of persons, viz., 1. Common citizens, 2. Those related to the King, 3. Nobles. 4. Those having rendered

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meritorious service, and 5. Officials in active service. In case of common citizens invoking this substitution, three essential requisites must be present. 1. That the offender deserved pity; for instance, an aged man; 2. That the law was doubtful; 3. That the character of the offense was not very grave; for example, if a man committed a crime punishable by one of the Five Penalties, he could ask for the substitution of banishment for corporal penalty in case the offense was not as grave as to warrant the application of the afflictive penalty. Of course, in addition to this last requisite the other mitigating circumstances must also exist.

There were three degrees in the scale of banishment: 1. 1,000 Li (Chinese mile) away from home, 2. Outside of the Nine Counties, 3. Outside of the territorial limits. The first degree is obvious, but the second and the third require a little explanation. It should be noted that in the olden times China was known as the Middle Kingdom; she was in the center and surrounded by many tribal States. Therefore, the Nine Counties constituted China Proper, and the term "Territorial limits" was used to designate the boundary line, not only of China Proper but also of the tribal States which were her colonial possessions. From this it is obvious that the second degree was intended to exclude the criminal from the civilized community, and the third to exclude him not only from China Proper but also from her colonial territories. Thus, the historical books compared this kind of banishment to the flowing water, meaning by comparison that a person thus exiled was to wander away aimlessly without any definite place to go.

The other light penalties were: Whipping, birch-rod, and fine. They were for the violation of minor offenses. Thus, whipping was to be applied to government officials; birch-rod was employed as a corrective measure to be used in schools; and fine was imposed to compensate the wrong done in small offenses. Pardon was granted to those committing crimes by mistake, inadvertency, or by misfortune; the latter is equivalent to the so-called "Act of God" known in modern jurisprudence. There were certain classes of crimes which could not be pardoned, such as treason, murder, physical injury, robbery, abuse against chastity, and similar offenses. There were also two classes of persons to whom neither fine nor pardon could be substituted for bodily punishment, even though under ordinary circumstances such fine could be imposed and pardon given. Thus, if a person committed a crime for the second time he could not ask for such privileged

alternatives; so also with a man who had committed a crime with the intent of escaping penalty by relying upon the strength of his political influence.

COMPARED WITH HAMMURABI CODE

By way of comparison, we shall endeavor to point out the common features, and make a few marked contrasting points between the Ancient Chinese Penal Law and the Code of Hammurabi, the Babylonian Law. The reason for picking out the Code of Hammurabi and not the Institutes of Justinian for comparison, is twofold: 1. because the Code of Hammurabi existed about the same time as the Five Penalties, the ancient Chinese Penal Law; and 2. because the Babylonian legal system is generally considered as the mother of the Roman Law, and as such, had contributed many legal notions to the Institutes of Justinian. Thus, the modern Civilians, Morris of America, Revillout of France, and Ihering of Germany, all agree that in order to find out the origin of Roman Law one must study Babylonian Law.

The distinctive lineaments of these two ancient legal systems may be portrayed as follows:

COMMON FEATURES.

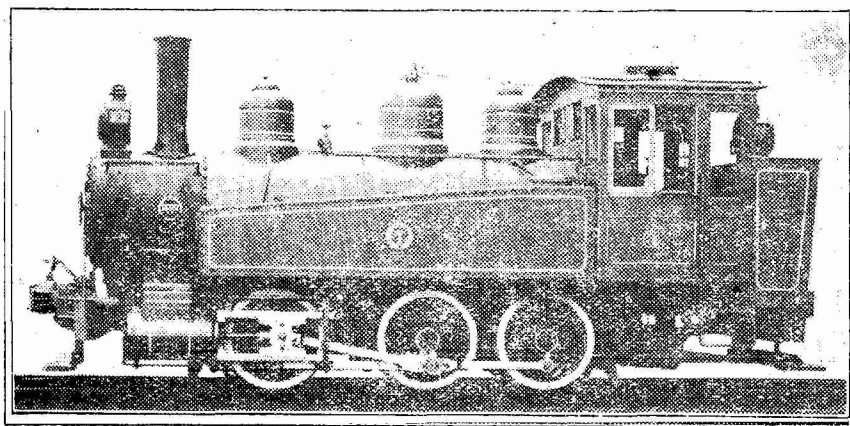
The Ancient Chinese Penal Law as enacted by Shun (2281 B. C.)	The Babylonian Law based upon the Code of Hammurabi (2250 B. C.)
Branding on the face	Branding on the forehead (sec. 127)
Cutting off the nose	Cutting off the ear (sec. 205), tongue (sec. 192) and plucking out the eye (sec. 193).
Cutting off the feet	Cutting off the fingers (sec. 195.)
Castration	Cutting off the breast (sec. 194.)
Death penalty	Death penalty (secs. 25, 129, etc.)
Fine with gold	Fine with silver (sec. 198)
Birch-rod and whipping	Whipping (sec. 202.)
Banishment	Banishment (sec. 158.)

CONTRASTING POINTS.

Guiltiness determined by evidence.	Guiltiness determined by ordeal.
Law applicable to all citizens alike.	Different laws for freemen and slaves.
Murder was committed when life was unlawfully taken.	Killing of a slave incurred no criminal liability.

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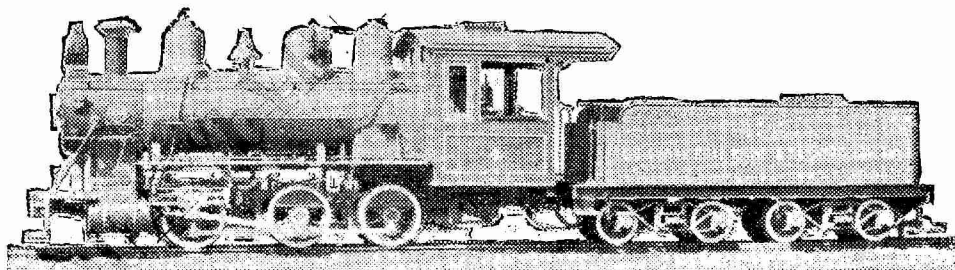
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Imposition of penalty not measure of revenge.

Imposition of penalty was a measure of revenge, an eye for an eye (sec. 196), a bone for a bone (sec. 197), a tooth for a tooth (sec. 200), life of a daughter for life of a daughter (sec. 210), life of a son for life of a son (sec. 230).

No extra-judicial punishment. Throwing thief into fire if found stealing during fire (sec. 25). In this connection see also sec. 21.

From this comparison it may be said that the two systems of law show the existence of different conditions of society and consequently the different stages of development of civilization. The Babylonian law was, to a certain extent, aimed at revenge, which was a very primitive idea of punishment. Ordeal is another feature of primitive trial, while unequal application and protection of law is opposed to the very fundamental principle of modern jurisprudence. Extra-judicial punishment is a feature of very ancient method of redressing a wrong. On the other hand the revengeful measure by way of punishment was totally absent from the theory of Criminal Jurisprudence in Ancient China. No ordeal was used to determine the guilt of a person but evidence was the sole factor to decide the fate of the accused. No extra-judicial punishment could be inflicted upon any person and no life of a citizen was subject to the free disposal of another individual; there is no less than the guaranty of freedom of life and an expression of the sententious phrase of "due process of law." All these show that over 4,000 years ago the civilization of China had not only passed that primitive stage of development but had advanced, in some respect, to the Twentieth Century idea of civilization. China's idea of equality, equality before the eyes of the law, was her far-reaching legal aspect which is the very foundation of democratic institutions. But above all there is one outstanding aspect that reverses our great attention, and that is the fact that the ancient political leaders in China had the audacity to provide strict rules solely to impede abuses that might arise from political influence. It is doubtful, if similar measures will ever be prescribed to remedy the present-day evil of political crookedness.

Viewing, then, the whole comparison from all angles, it may be safely said that the Ancient Chinese Penal Law system was the product of highly civilized people secured for centuries in the enjoyment of peace, while the Babylonian Code was the product of the people who had had many first stages of primitive ideas of the Dark Ages, and who were in the development of civilization. As a whole, the two ancient legal systems are of great intellectual value to modern jurisprudence.

In conclusion, one thing is worth mentioning and it is this: it is strange for the World Powers to extend their legal systems to China solely on the ground that the Chinese law was too primitive for the people of the Modern World; apparently, these powers have overlooked the fact that the Chinese law enforced several thousand years ago, has been unconsciously adopted by their legal systems. Let us hope that before long, universal conscience may be aroused and the practice of exercising extra-territorial jurisdiction may be soon permitted to fall into desuetude.—From *The Chinese Student Monthly*, published in America.

The Situation at Canton

ACCORDING to an official report of the general headquarters of Dr. Sun Yat-sen, the Generalissimo of the Constitutionalist forces in Canton, the port of Wuchow up the West River in the Canton Delta was lost to the pro-Peking Kwangsi-ites, July 17, the third army of the Cantonese under General Wei Pong-ping entering that port that day. If the Cantonese are able to hold out, the West River campaign of the Constitutionalist Army may be ended with this important success. The fall of the port of Wuchow, Kwangsi, into the hands of the Cantonese will practically reopen the Hongkong-Wuchow traffic, a vital factor in the Hongkong food supply. Lately the general food price in Hongkong rose considerably because of the lack of meat, poultry, and other supplies from there.

When this was being written, July 19, the Cantonese Army siding with Dr. Sun Yat-sen were bombing the city of Waichow on the East River section of Kwangtung, one of the strongest holds of General Chen Chiung-ming, leader of



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the anti-Sun faction of the Kuomintang now struggling to control Kwangtung Province. An unconfirmed latest report indicates that General Chen is making his last stand there.

Along the North River section of Kwangtung, fighting between the pro-Peking Northern and Kwangsi troops under Wu Pei-fu and Shen Hung-ying and those of the Constitutionalists have ceased, and the Yunnanese unit of the latter forces are now dominating the situation there. No sooner had the pro-Peking and the pro-Cantonese conflict closed temporarily in early July than some internal dispute among the Yunnanese arose, and the result was the dismissal of Division Commanders of Yang Chi-shang and Yang Yu-hsin of the First and Second Division respectively of the Yunnanese. Whether or not these dismissals will ultimately bring harmony into the Yunnanese unit in Kwangtung is at present the question. The Generalissimo has just issued mandates reorganizing the Yunnanese unit in Kwangtung, making General Yang Hsi-min still the commander-in-chief of the Yunnanese Army and commander of the first corps. The other two corps newly created are put under the commands of General Fan Shek-shang and General Chiang Kwang-liang. The Yunnanese unit, when finally reorganized, will have three corps, each having two divisions. It is understood that Generals Fan and Chiang have always been loyal to Dr. Sun and their presence in the inner power of the unit will greatly strengthen his position. For the time being, General Yang Hsi-min and his commands are in full control of the North River districts in Kwangtung, especially the cities and towns along the Canton-Hankow Railroad, Kwangtung Section.

The overtures of Tsao Kun, Li Yuan-hung, and other Northern militarists and politicians to combine with the Constitutionalist Party under Dr. Sun Yat-sen have been informally rejected so far. Dr. Sun has also refused to entertain the proposal for a compromise with General Chen Chiung-ming so as to bring about an early cessation of arms in Kwangtung. Dr. Sun will consider nothing but an offer of unconditional surrender from Chen.

By an order of the Generalissimo, Dr. Sun Yat-sen, the Secretary of Reconstruction of the General Headquarters has taken temporary charge of the Sunning Railroad in the Sze-yap, popularly known as the big four districts with Toyshan at the most important point. The Sunning Railroad is a commercial concern belonging to private shareholders, but the General Headquarters are taking it as a military measure, offering the nationalization of the railroads in America during the World War as a precedent. Chin Yee Hee, managing director of the railroad, was requested to lend special support towards the war financially some weeks ago, but it is understood that Mr. Chin has failed to make himself useful to the authorities, and his temporary dismissal is the result. Eng Hok Fong, assistant secretary of reconstruction under Dr. Sun, a leading Toyshan citizen with large business interest in Hongkong, is reported as having approved of the action of the Generalissimo.

Since the middle of January of the present year, all the principal railroads in Kwangtung have gone under military control irrespective of their former status. The Yunnanese Army is controlling the Canton-Samshui and the General Headquarters are administering the Canton-Hankow Railroad, Kwangtung section. The Canton-Kowloon, under joint Chinese-British administration under loan agreements, has been permitted to operate without direct government control. On account of the war, however, this road has been much interrupted during the last few months. Most of the trains of this line, except the daily express, are now running as scheduled.

The Canton Municipality is proposing to levy several new taxes. They include a business tax, a land tax, and assessments for sanitary improvements. A charge on advertising at public places will be made. Some 15 classes of business will be asked to take out licenses the fees of which run from a few dollars to a thousand. All these proposals, except the advertising tax, are still pending action of the Municipal Commission and the Civil Governor.

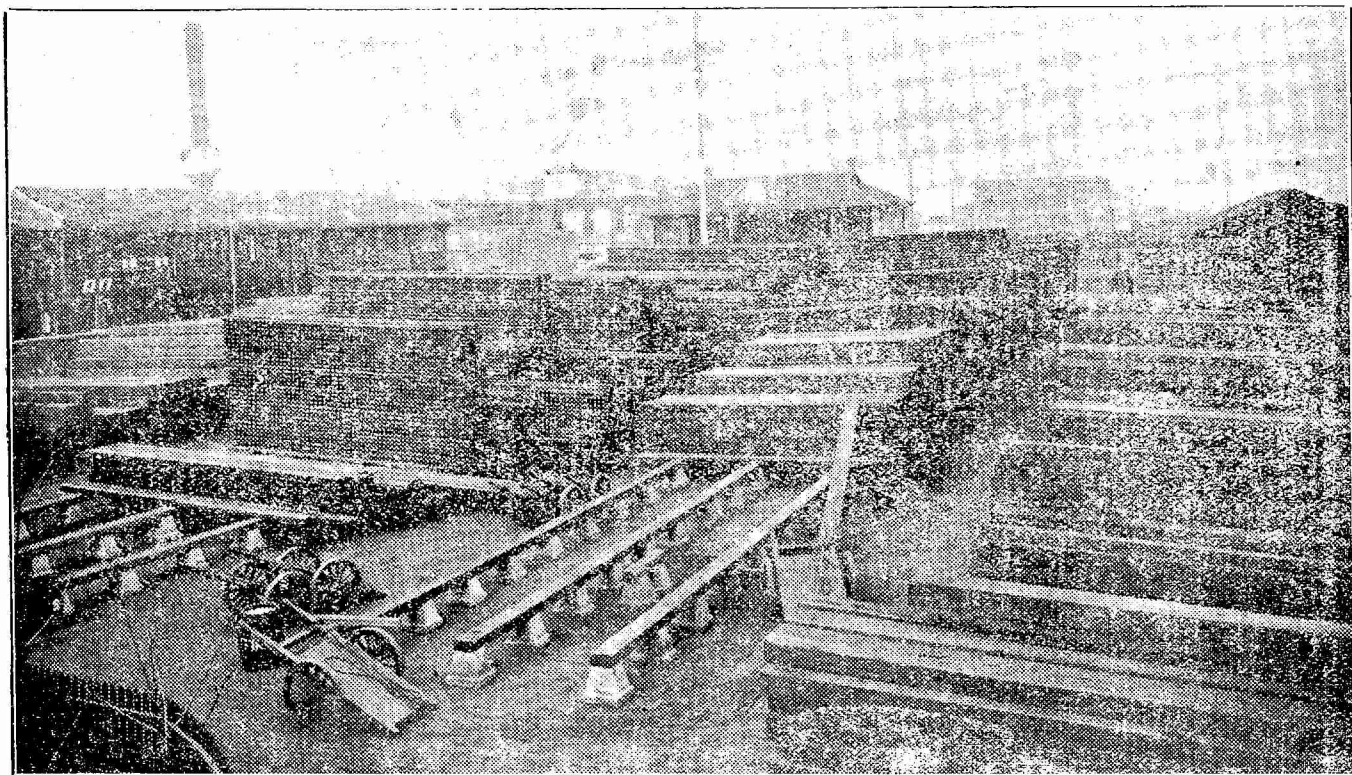
The Canton labor unions expect to hold a reception in honor of the Chinese Students Union within the next few days. The students have just removed their national headquarters from Shanghai to Canton.

Cheng Tien-tow, a former managing director of the Kwangtung Provincial Bank, is being held by the Canton authorities on instruction of Dr. Sun Yat-sen. Cheng is being asked to offer satisfactory accounts for several million dollars worth of banknotes which he issued but failed to register. Cheng is a graduate of Chicago University and has been active with the Kuomintang movement since 1911, having held the posts of commissioner of public works, commissioner of finance, managing director of the Provincial Bank, and special commissioner of many undertakings of the government, during the last ten years.

H. W.

Canton, July 19, 1923.

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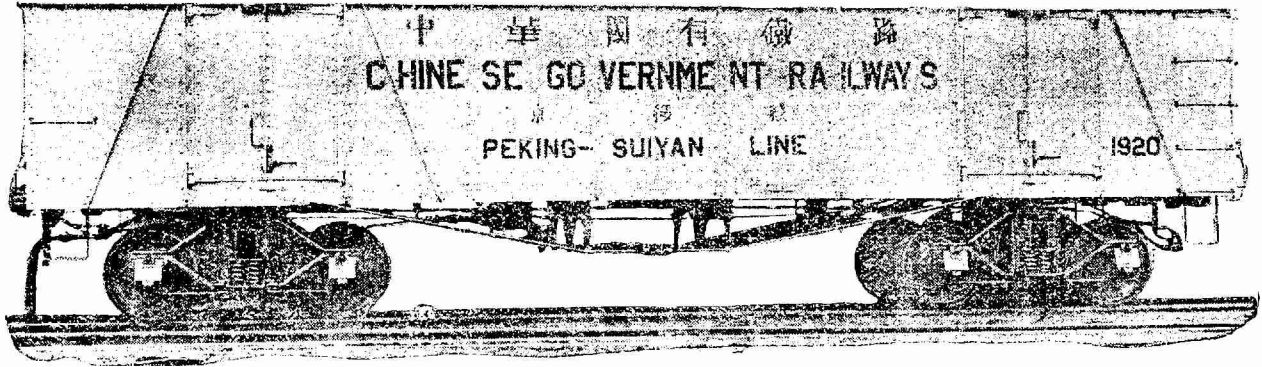


Fuchuen Kenneth Sah

薩福均字少銘

Mr. F. K. Sah was born in Foochow, Fukien Province, in 1883. He studied at St. John's College, Shanghai, from 1898 to 1903. He went to America in 1903 as attache to the Chinese Commission to the Louisiana Purchase Exposition held at St. Louis, Mo. In 1906 he entered Purdue University where he was graduated in 1910 with the degree of B.S. in Engineering. In the fall of 1910, Mr. Sah returned to China and joined the Kuangtung Yueh-Han Railway at Canton as student engineer. In the Spring of 1912 he was promoted to be assistant engineer in charge of one Construction Section. In the summer of 1913 he was transferred to the I-Kwei section of the Szechuan-Hankow Railway where he was engaged principally in the survey of the Upper Yangtze gorges. In the Spring of 1917 he was transferred to the Hankow-Ichang section of the same railway to complete the construction work left over by German engineers. Upon the completion of the construction work in 1918, Mr. Sah was engaged by the Kuo-Pi Railway Co. of Yunnan to take charge of location and construction of a new branch line. He held that position until 1919 when he went to Peking to join the Ministry of Communications. In the Spring of 1922 he was appointed assistant chief of the Land Development Department of the Peking-Hankow Railway at Hankow and later was transferred to the Shantung Rehabilitation Commission and appointed a member of the Committee for the valuation of the Shantung Railway. After completing the valuation work he was appointed Chief Engineer of the Kiao-Tsi Railway which position he is still holding. Mr. Sah comes from a well-known family, his father being Admiral Sah Chen-ping of the Chinese Navy.

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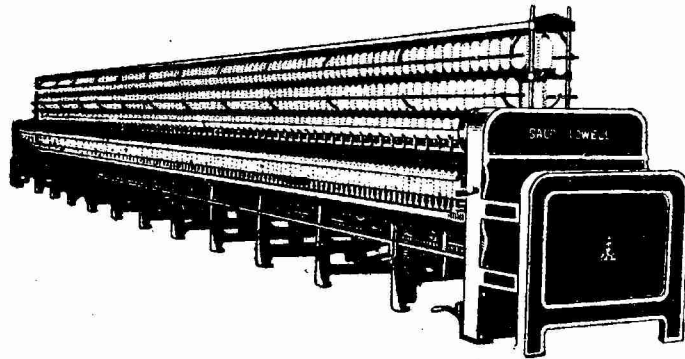
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Singloh Hsu

徐新六

Mr. Singloh Hsu was born in 1890 at Hangchow Chekiang. After completing his education in the Chinese classics and literature at home, he entered the Imperial Polytechnic College (Nanyang College), Shanghai, from which he was graduated in 1907. In 1908, Mr. Hsu went to England at the Chekiang Provincial Government's expense and entered Birmingham University to take a course in Science. He was graduated in 1911 with the degree of B. Sc. Subsequently he entered the Faculty of Commerce, Victoria University of Manchester, where he was graduated in 1913 with the degree of B. Com. Mr. Hsu then went to Paris and entered the Ecole des Sciences Politiques (Finance Section). He returned to China in 1914 and the next year, joined the Ministry of Finance, Peking, as a "Chien Shih" Senior Secretary, which position he later resigned to join the Bank of China as Associate Director of the Treasury Department. In 1917, Mr. Hsu again joined the Ministry of Finance as a Secretary to the Minister. He returned again to the Bank of China in 1918 as sub-manager of the Peking office. He was sent to Europe by the government and was attached to Mr. Liang Chi-chiao's Mission at the Paris Peace Conference. While in Europe, he served as Chinese Technical Delegate for Reparations. He returned to China in 1920. In 1921 Mr. Hsu again toured Europe and America to study post-war economic and business conditions. He returned to China in July of the same year. Subsequently he organized the Sintoan Overseas Trading Co., Ltd. and he was elected managing director. In the same year he joined the National Commercial Bank, Shanghai. He is now the bank's assistant general manager. Mr. Hsu has received from the Peking government the Third Class Chiahao and the Third Class Wenhui Decorations.



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Men and Events

Maurice Votaw of St. John's University, Shanghai, is planning to depart for Peking on Tuesday, July 31, on a month's visit. Mr. Votaw is instructor in journalism at St. John's.

Louis Freeman, representative in the Orient for the Quaker Oats Company, was in Shanghai after several weeks' visit in Japan and Peking. He plans to sail for England by way of Suez in September.

Nelson T. Johnson, U. S. Consul-at-large, who is making an inspection of Consulates in the Orient, recently returned from Amoy. He will be in Shanghai a few days when he will proceed to Tsingtao and Chefoo, accompanied by his mother. They are stopping at the Astor House.

The June issue of the *Yokohama Chamber of Commerce Journal* estimates that Japan will have an unfavorable balance of trade for 1923 in the sum of Yen 150,000,000. The number contains an interesting article on "Coal Output in Formosa," besides many notes and the usual monthly trade and financial statistics.

Claud C. Faulk, of the Chinese American Bank of Commerce, Peking, was in Shanghai this week on business connected with the removal of the head office from Peking to this city. He expects to return to Peking in a few days and later will return to Shanghai accompanied by Mrs. Faulk where they will make their home.

Robert Mishler of the Robert Dollar Company, Shanghai who recently departed for America by way of Russia, after several days stay in Peking. Harbin and Chita departed for Moscow on July 10. Mr. Mishler will spend a short time in Moscow and proceed to Berlin. After touring in Europe for a short time he will sail for his home in Washington, D. C., returning to Shanghai sometime in October.

In the *Review* for May 5 last there appeared an article by Malcolm W. Davis, entitled, "America Leads in Radio Development." This article appeared originally in the magazine *Our World* published in New York. For some reason credit was not given when the article was printed in the *Review*, and the Editor of the *Review* takes this late opportunity of apologizing to the editors of *Our World* for the oversight.

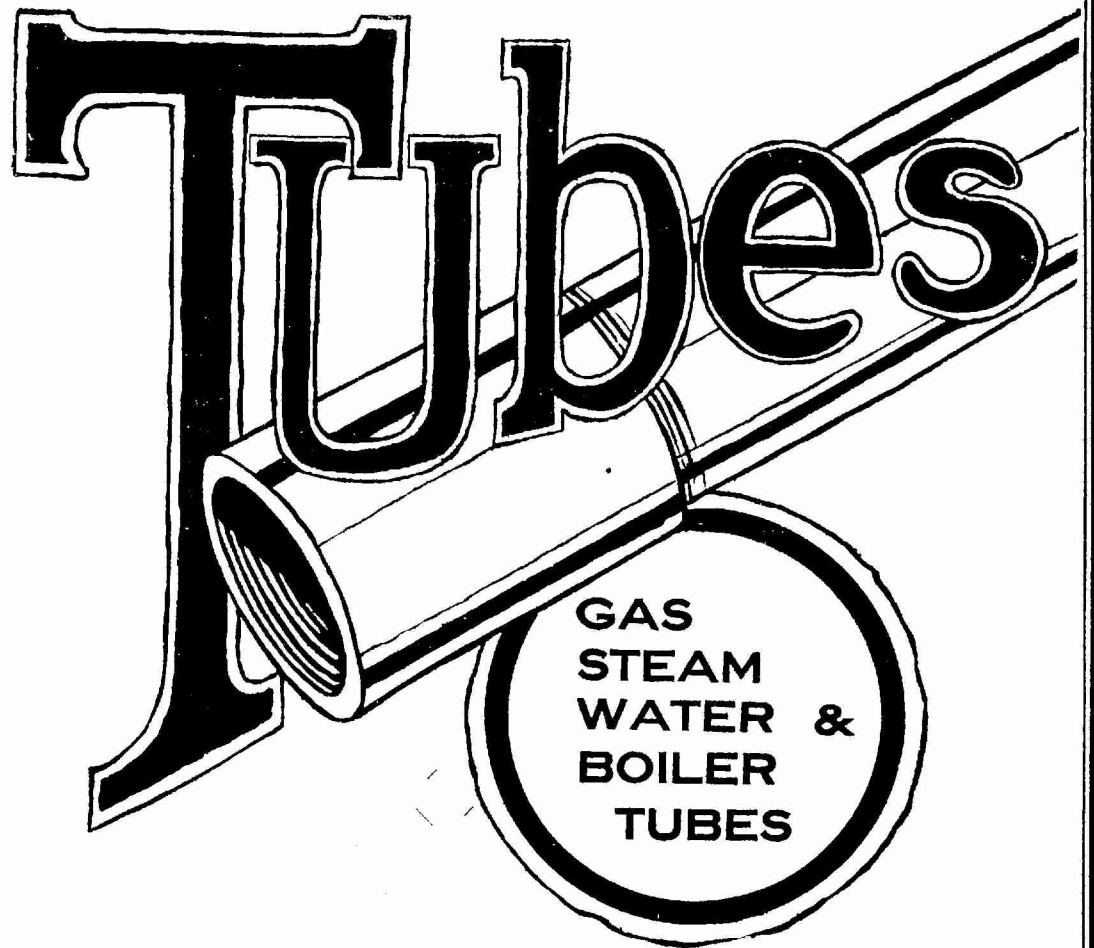
Dr. Frank Crane, an American journalist, who is on a tour of the Orient, arrived in Shanghai this week from Peking and Nanking. Dr. Crane addressed the Rotary Club on Thursday, taking as his subject "The Rise of the Modern Business Man." Dr. Crane has a world wide reputation as a writer and speaker. He is accompanied by Mrs. Crane, his daughter, Mrs. Daphne Drake, and nephew Henry Crane.

The office of the American Commercial Attache is in receipt of a copy of "Marconi's International Directory of Cable Addresses 1922." Numerous requests have been made at this office in the past for the cable addresses of American firms which we were unable to furnish. This Cable Address Directory is considered a valuable asset to our Commercial Library, and a cordial invitation is extended to business men in Shanghai to make use of it.

Judge C. S. Lobingier of the United States Court for China, is planning to depart on Saturday, July 28, for an extended northern trip including Harbin, Tientsin and Peking, to hold court sessions. There is a long docket in Tientsin and in Peking several depositions are to be taken in the banking fraud case in which the Guaranty Trust Company and the Asia Banking Corporation are concerned. He will be accompanied by R. T. Peyton-Griffin.

The death occurred on Tuesday, July 24, of the Rev. H. K. Wright of the American Presbyterian Mission, Shanghai, following a sudden collapse on the tennis court. Mr. Wright is survived by his wife, who is in Shanghai, and a son at Peiteihao. Mr. Wright was a graduate of the Union College and the Union Theological Seminary of New York and came to China originally in charge of the Presbyterian Boys' Academy at Ningpo.

Miller Joblin, general manager in the Near East of the Standard Oil Company of New York and president of the American Chamber of Commerce in Constantinople, committed suicide by shooting on June 17. Mr. Joblin was a native of North Carolina and for several years was connected with



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the Standard Oil Company in China and was stationed in Hongkong and other places. He first came to the Far East after the American occupation of the Philippines and served in the civil service in Manila for several years before joining the Standard Oil Company in China.

The Commercial Press, Shanghai, has recently published a book on "Exercises in Elementary Physics," by William Warren Stiffer, Ph. D., assistant professor in charge of department of physics, at the Peking Union Medical College. There has been a long-felt need for an elementary book of this sort which is an introductory course in physics offered in the first year of the premedical school. This course includes lecture and recitation work based on such a textbook as Black and Davis' "Practical Physics" or Millikan and Gale's "Practical Physics." In the majority of the exercises the apparatus is of the simplest standard.

Imports of merchandise variously described as mah-jong, mah-diao, mah-chuck and pung-chow, and referred to as Chinese dominoes, are properly dutiable relative to the component material of chief value, according to Assistant Secretary Moss in a letter to the collector of customs at San Francisco. Heretofore it appears that these games have been assessed at some ports at the rate of 45 percent *ad valorem* as part manufacture of bamboo, at other ports they were assessed according to the component material of chief value, and the contention has been made that the merchandise is properly dutiable as dominoes at the rate of 50 percent *ad valorem*.

The Yokohama Chamber of Commerce has just published a pamphlet of charts showing the foreign trade of Yokohama and Japan for 1922. Much interesting information is set forth, such as the growth of Japanese foreign trade from Yen 800,000,000 in 1908 to Yen 3,500,000,000 in 1922. Of this trade Yokohama has handled consistently during that period about half of the exports and one-third of the imports. Three-fourths of Yokohama's 1922 exports went to America, whereas but one-third of the total imports were from America. Other charts compare wages and the cost of rice, bank deposits, loans and rates of interest, and tonnage and nationality of vessels calling at Yokohama.

"A Plea for National Regeneration" is the title of a lecture recently delivered by V. P. Ting, Professor of English of the Fourth Normal School at the South Eastern University. The talk was given at a recent meeting of the English Literary and Debating Society of the Fourth Normal School of Kiangsu. Mr. Ting deplored the fact that since the foundation of the Republic of China, not any satisfactory progress in the way of national regeneration had been made. He comments frequently on the banditries and skirmishes in the interior and all parts of China, with especial attention called to the Lincheng affair. Education, so Mr. Ting points out, is the only way to develop the country, from the illiterate on up to the development of honesty among the more educated.

William's College, a school established in 1919 by William Liu, a private institution without any help from the Chinese Educational Department or from any notable persons, has recently closed for the summer months and published its annual class book for 1923. The school in the beginning had only seven students taken care of in one class room, while at the present time the student body numbers some 530, and supports a faculty of twenty teachers, foreigners and Chinese, who hold degrees from various colleges and universities in England and America. Mr. Liu is quite zealous in educational work, understanding that the future prosperity and greatness of China depend upon education and he exerts all his efforts and energy in advancing the welfare of the college.

U. S. Silk Association to Have Representatives Here

Following the visit of the Second American Silk Mission to Shanghai in April the Silk Association of America has designated Mr. R.E. Buchanan, the secretary and treasurer of the Shanghai International Testing House as its representative in Shanghai. Mr. Buchanan will collect and compile statistical information upon the raw silk industry of China and keep the Silk Association of America in touch with the tendencies of the raw silk markets. He will also be prepared to furnish information regarding the Associations' activities and will keep on file copies of all of the Associations' publications. The work will be carried on in the office of the United States Testing Company, Inc. at 10 A Hongkong Road, Shanghai.

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News from Central China

The native press comments very favorably on the stringent action taken by the United States Court at Shanghai against the culprits accused of arms smuggling.

General Sun Chuan-fang, formerly Commissioner of Ichang and now Governor of Fukien Province, is visiting Hankow and Wuchang on an important mission on behalf of Wu Pei-fu.

The bandits and Tibetans on the western border of China are organizing raids against Szechuan, and in view of their operations, General Chen Hsia-ling has telegraphed Peking for an immediate remittance of funds.

It is stated on good authority that in connection with the exciting gun-running case now in the U. S. Court in Shanghai it is highly probable that several foreigners in Hankow are involved in the smuggling scheme of Captain Kearney.

The Finnish subject who was arrested on charge of smuggling a large quantity of ammunitions to Hankow last month has been tried several times at the Chinese court in Wuchang. He has been sentenced to three years' imprisonment in the Chinese jail.

Near flood condition is prevailing in Hunan and Hupeh districts. At Changteh, the city gate, has already been flooded while the district is being protected only by a weak earth dyke. The Han River districts above Hankow are also facing a distressing situation.

The Szechuen troops under General Yen Teh-chi are attacking the northern forces in the vicinity of Chungking, which is reported to be in danger. General Wu Pei-fu has ordered all Chihli troops stationed on the upper Yangtze to relieve the endangered position of the Chihli faction in Szechuan.

The Customs at Ichang has seized, for three weeks ending July 10, some 35 piculs of opium which is equivalent to 74,000 Chinese ounces. Valued at the current price of \$2 an ounce, the seizure amounts to \$148,000. Twelve piculs of this was taken from *s. s. Mei Ren*, and nine piculs from *s. s. Alice Dollar*.

In view of growing competition offered by the modern Chinese banks which have been increasing in Hankow, the Native Bankers' Association has decided to organize a banking combine with the scheme to issue native bank notes. The promoters have restricted membership to the combine to first class native banks.

For the promotion of China pony racing, other sports and other forms of recreation, an International Recreation Club is being organized under the patronage of Chinese and foreign merchants. The capital to be raised for the Club is \$400,000 divided into 14,400 ordinary shares of \$25 each and 4000 founders' shares of \$10 each.

J. Glenn Babb, formerly managing editor of the *Japan Advertiser* and Tokyo correspondent of the *Philadelphia Public Ledger Syndicate*, visited Hankow on a sightseeing trip. He is now touring the principal cities in China, and during his visit to Hankow he intended to proceed to Peking, until a telegram called him to Shanghai.

General Wong Yu-ching, for some time Commander of Chihli reinforcements on the upper Yangtze, has been formally appointed Inspector-General for that section of the valley. This appointment was decided upon when Yang Shen was defeated by the Szechuan Army, and could not secure the assistance of General Wong.

On account of increased operating expenses of all river steamers, the freight for the Hankow-Shanghai and upriver services to Szechuan and Hunan ports has been increased by 10 percent effective from July 15. This applies to all steamers of Jardine, Matheson & Co., Butterfield and Swire and the China Merchants S. N. Co.

An independence movement under General Tsai Chu-yao against Governor Chao Keng-ti of Changsha is gaining ground, much alarm having been caused by the movement of troops in western Hunan. The two hostile armies are heading toward collision in the near future. Martial law has been proclaimed in Changsha and Hunan.

The summer resorts of Kuling and Chikungshan are both safe, according to letters from people there. Kuling is entirely free from the menace which was once reported to be threatening that place. At Chikungshan, General Chin Yung-ao repeatedly assured foreigners that his troops would be sufficient to suppress any outrages in the vicinity.

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A Peking report says that Japanese interests are negotiating for the purchase of the Yangtze Engineering Works, a Chinese enterprise with a large plant in Shanghai and shipways at Hankow. This deal coupled with the control by the Japanese of the iron and coal interests of the Han Yeh Ping Co., when completed, would give Japan the virtual control of the biggest industrial enterprise of China.

The Szechuen junkmen have compromised to let river steamers carry half of Szechuan's annual salt export, the traffic until the above arrangement was made having been exclusively in the hands of junkmen. This means that there will be from now 34,000 tons of salt annually for steamer transportation. The junkmen are being indemnified for giving half of their traffic to large steamers.

General Munthe, a Scandinavian expert in the employ of the Chinese government, who has been commissioned recently to study railway conditions in north China with a view to making recommendations as to their effective protection, visited Hankow this week by way of the Peking-Hankow line. He has completed his investigations along the Kinhan line, and is proceeding to other northern lines for the same purpose.

For the benefit of employees in the Chinese modern banks in Hankow, a night school has been proposed by the Education Committee of the Hankow Bankers' Association. The work of organization is in the hands of Tseng Wu-cho, of the Bank of Communications; John Cheng, of the Chinese American Bank of Commerce, and T. H. Chen, of the Industrial and Commercial Bank. The latter two bankers are both graduates of American universities.

The Japanese Consul-General of Hankow visited Loyang last week in an attempt to bring about some effective action from Wu Pei-fu for the suppression of anti-Japanese boycott in Hankow and the interior. It is said that he has stated to General Wu Pei-fu that he should feel grateful to the fact that it is the Japanese funds that keep the Hanyang Arsenal in operation. General Wu Pei-fu has promised to issue official orders for suppression.

Father P. A. Melotto, of the Roman Catholic Mission who was kidnapped by Hupeh and Honan bandits at Yingcheng has been carried into the stronghold of the outlaws in Honan province. The joint forces of Hupeh and Honan are pursuing the brigands in an attempt to secure the release of the Italian priest. So far there is no prospect of an early release of the captive, although the officials in Wuchang are boasting of their effective measures of bandit suppression.

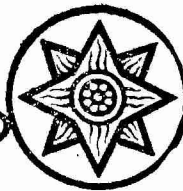
Miss Elizabeth Wood, for many years Librarian of Boone University, Wuchang, has gone to Peking on a month's visit prior to her departure to America in the interest of her national library scheme for China. Miss Wood is interesting herself with a project of library movement in China, and for this she has already been offered the full support of many leading Chinese in the country. The library movement is a purely Chinese movement for the Chinese and by the Chinese.

The French cruiser at Ichang, in the evening of the Bastille fete, dragged loose from her anchors and went sweeping down river at the speed of six knots, crashed full tilt into ships, crowded in the river damaging the *Tungyang Maru* and *Tahung Maru* and the steamer *Wanhien*, and barely missing the new river steamer *Pingwo* of Jardine, Matheson & Co. and the *Tungting* of Butterfield and Swire. The French gunboat, with a hole smashed in her side, was found lying across one of the Japanese boats with which she collided.

The leading Chinese missionaries of the American and British Missions in Hankow have received an invitation from the Christian General Feng Yu-hsiang, to proceed to Nanyuan, where General Feng is planning a summer conference for his troops. The Christian leaders are invited to give lectures for the enlightenment of his soldiers. Much unfavorable comment has been made upon the recent part played by General Feng in the conspiracy resulting in the ousting from office of President Li Yuan-hung, a native of Hupeh.

A motor highway which has been projected by a Chinese syndicate in Hankow a few years is now nearing success in its stage of organization. The road covers the important district between Hsiangyang and Shasi in Hupeh, where the only available means of communications are extremely slow and precarious. It is stated that the survey work of the first section of the road has been completed and the work of construction will commence on that section soon. A truck service will be started on the first section before the completion of the line. The cars to be used for the service have been ordered from an American firm here.

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The Week in the Far East

(Covering the period from July 18 to July 25).

A sigh of relief passed over Peking on Monday and the tense political situation lessened slightly, with the announcement that Dr. Wellington Koo has at last taken over the Foreign Office, and much is expected from Dr. Koo, who will guide the wheel of the Republic of China for the time being, at least. Outside of this announcement nothing of startling news has developed during the week under review. The Philippines has been battling with a political issue, and came to a crisis when Quezon and the entire Filipino Cabinet resigned and refused to cooperate with Governor General Leonard Wood. Peking is still battling with the indemnity to be paid to the captives in the Lincheng affair, and bandits continue to roam at large.

Difficulties of the Capital Nearer Solution

Perhaps the best summary of the situation at Peking is contained in a news despatch from there on July 23, which brought the announcement that Dr. Koo had assumed the chair of the Foreign Office:

"Dr. Wellington Koo assumed office as Foreign Minister at noon today and later received the staff of the Waichimpo. This action has vastly changed the political situation, delighting the Chihli Party and others outside the political arena, who predict smoother waters for the Government.

"Last week, owing to Mr. Wang K'o-ming's refusal to accept the portfolio of Finance, and the illness of Mr. Kao Ling-wei, the few remaining members of the Cabinet lost heart. Admiral Wu Yu-lin left for Tientsin, ostensibly to discuss the situation with General Tsao Jui, but he is reported to have been inclined not to return. The country was then on the verge of being without a Cabinet, as well as without a President and without a Parliament. At this critical state, Marshal Tsao Kun sent an urgent message to Dr. Koo, urging him to take up the Foreign Office, pointing out that as Foreign Minister he would head the Cabinet and thus practically become Acting President.

"Admiral Wu Yu-lin has returned from Tientsin and will attend at the Cabinet office this afternoon.

"The Cabinet has despatched Gen. Hsiung Ping-chi to persuade Mr. Wang K'o-ming to become Finance Minister. No answer has been received from him, but it is generally believed that he will not accept the post. The names of Mr. Pan Fu and Mr. Wang Shih-yuan are now mentioned in connexion with this office.

"Dr. Wellington Koo this afternoon conferred with the Vice-Minister of Foreign Affairs on pending questions, especially the payment of diplomats abroad.

"The new Foreign Minister is issuing a circular telegram to all the provinces saying that the majority of members of Parliament urged him to emerge from his retirement. He therefore felt it his duty to undertake the difficult task in order to maintain China's international position. He hopes that the Constitution will soon be completed and unity of the country soon brought about."

Tsao Kun in Favor of Permanent Constitution

Rumors were current in Peking that there would be no solution to the political muddle unless Tsao Kun would announce his approval of the permanent constitution. He had already declared himself in favor of the early completion of the constitution, but had not issued any official statement to this effect owing to the opposition of the radical tone of the Tientsin party. He was rather dubious as to its effects upon the members of his own party. Now that Mr. Wang Yu-chi, Director-General of the Wine and Tobacco Administration, has urged upon him the necessity of making an immediate declaration so as to dispel the suspicions of the M.P.'s, Marshal Tsao has decided to give up his scruples and come out in favor of it.

Marshal Wu was extremely frank in expressing his opinions and discussing the various phases of China's domestic and international problems. Out of the many questions asked, there was not a single one which he ignored or evaded in answering. His views may be considered final so far as military strength is necessary to carry out the programs of the Chihli party.

General Wu Pei-Fu on Presidential Election

General Wu Pei-fu upon being interviewed says he will not recognize an illegally elected president and frankly expressed his opinions on China's political situation when interviewed on his fiftieth birthday at his residence. General Wu among other things had the following to say:

"Whoever is legally elected president of China by Parliament will be recognized by me," he said. "Parliament is the supreme legislative power for the entire republic. The provincial authorities and the military authorities as well, should leave it free to do its work. Everything is in the hands of Parliament. I will not recognize who is not legally elected."

"The Chihli party is like a family," he continued with a smile, explaining the general answer. "Marshal Tsao may be considered the father and I might be called the eldest son. There are also other sons. Some of these sons seem to believe that they can take their father by force to Peking and put him in the president's chair. That is not Marshal Tsao's idea nor is it my idea. We are playing practically no role in the present campaign at Peking."

Marshal Wu said that, aside from newspaper reports whose accuracy he had doubted, the first authoritative word he received of President Li Yuan Hung's departure from Peking and resignation was a telegram from the latter, five days after he had arrived in Tientsin. He was kept in ignorance of both that the overthrow of the administration was impending and that it had occurred. It was also explained that telegrams and letters which his private secretary, C. T. Sun, sent from Peking the day of the President's flight were delayed and did not reach Loyang until more than a week later. While Marshal Wu's first inclinations might have been to support President Li's return to Peking the latter's subsequent relations with Mukden, Canton and the Anfu element altered the situation.

"Do you consider that foreign intervention has injured China?"

"Foreigners have helped China in many ways. However when foreign powers support the bad elements in China through ammunition, money and other assistance, attempting to become strong, they seriously hurt China. The attitude of some powers in preventing the entry of ammunition has been praiseworthy and of great good to the country. Other powers have done the country immense harm. Without foreign interference China would have been united long ago. The foreign powers and many of the Chinese people themselves, do not know who the bad elements are. Once they are removed, China will be united again."

"Marshal Wu is more optimistic over the outcome of his present campaigns in Kwangtung, Szechwan and Fukien than some of the day to day reports seem to justify. He anticipates that Dr. Sun will be driven from Canton within a month though unofficial reports indicate that General Shun Hung Ying, the Kwangsi general leading the opposition and reporting to Marshal Tsao Kun, is being steadily defeated and that General Chen Chiung Ming, Marshal Wu's confrere, has just ventured from his refuge in Hongkong to assist in the defense of his home city of Waichow against Dr. Sun's troops. Marshal Wu's reports are that General Chen has personally gone into the field."

General Shun is Peking's appointee as military governor of Kwangtung. Marshal Wu was asked whether the title would be taken from him and given to General Chen when Dr. Sun and his Yunnan troops are defeated."

The Boxer Indemnity Question

The newest suggestion made is for the return of the Boxer Indemnity by the powers to be used for road construction in China, whereby the disbanded soldier labor could be used. The Ministry of the Interior has submitted the matter to the government, according to the *Chung Mei News Agency*, in the following form: "This Ministry received a letter from the Hsiang Yang Road Construction Association to the effect that the Association has given hearty support to the proposal of the Peking Union of Chambers of Commerce that the powers be requested to give back their portions of the Boxer Indemnity for road construction. Soon afterwards another letter was received from the same Association reiterating this idea. The Ministry has thought it wise to employ soldiers for road construction, whereby the soldiers will be disbanded without causing disturbance in the country. This request, therefore, has to be carried out with all earnestness. But the approach of the Powers is a matter for the Ministry of Foreign Affairs, and the said Ministry has been notified with a copy of the letter from the Association. This Ministry is waiting for a reply, and as soon as the Ministry of Foreign Affairs has replied, information will be sent to you as to what the procedure will be."

Japanese Boxer Indemnity

Joint action in arranging plans for using the Japanese portion of the Boxer indemnity to be returned, was approved at a meeting in Central Park, which was attended by several retired men of affairs, and some former Cabinet members.

It was agreed to have the fund handled by a Sino-Japanese commission which proposal is said to meet with Japanese approval. Messrs. Chu Nien-tsu and Chen Yen-lin were appointed to draft regulations for the association according to the *Chung Mei News Agency*.

The Bandit Menace

While no late news has come from the Hankow region, regarding the release of Father Mulatto, the Italian priest who was captured sometime ago by brigands in that district, it is still feared he is being held under horrible living conditions. Recently a message came to Peking regarding the bandit menace in Mongolia. The report stated that the Mongolian Princes have asked General Chang Tso-lin to dispatch three brigades to the Mongolian borders and prevent further influx of Russians. Because of political trouble in Peking which prevented the answering of former notes, the Princes appealed to General Chang. They stated that in the last few months 3,000 new Russian soldiers have arrived but they do not suppress the bandits who work in outer Mongolia robbing herders and caravans. Russians, says the note, control the affairs of the government but do little except the administrative work and do not pretend to stabilize the interior of Mongolia.

Echo from Paotzuku

"Somewhere between the contributors and the committee organized to release Chinese captives from Paotzuku, there was a financial delay and now some of the Shantung officials are being accused by the bandits of not playing fair."

"The commission promised to raise \$50,000 to pay the bandits for releasing the Chinese, according to the officials. The prisoners were sent to their homes but the funds did not arrive."

"Bandit leaders accused the officials of holding the money and to prevent trouble they say, they raised a fund of \$4,000 and promised to get as much more as possible. Before this amount was paid the bandits threatened not to remain in the National army but when the funds were in their hands, according to the report, they pledged allegiance and went to the barracks.—The foregoing despatch was carried by the *Asiatic News Agency*."

Sun Yat-Sen Said to Be Losing Support

Notwithstanding strong propaganda, Dr. Sun Yat-sen is losing favor with prominent Chinese merchants abroad, especially in the South Pacific Islands. A joint cable received by the government and the Houses of the Parliament from the Chinese Chamber of Commerce at Java strongly attacking the "Generalissimo of the South-west" indicates this according to an *Asiatic News Agency* report. The telegram follows:—"During recent years, under the pretext of protecting the Constitution and Parliament, Sun Wen has been instigating the various disintegrating forces of the country to continue civil wars in the various provinces. As the senders are natives of southern Fukien, they are in possession of undeniable proofs that under Sun Wen's influence, Tsang Tze-pin and other insurgent forces are fighting against each other and it is now being extended to Swatow and Chaochow districts of Kwangtung solely for partisan and personal privileges. In view of the danger of foreign control of Chinese administration, railway and finance, it is absolutely necessary for the central government to despatch troops for the suppression of all disintegrating elements in Kwangtung, Fukien and other provinces at once." In Kuomintang circles, this cable is considered to be the personal opinions of several Chinese merchants whose native districts are being disturbed by fighting along the Kwangtung-Fukien frontiers and it is not believed that it will produce the desired effect; but anyhow, it is an indication of the falling power of Dr. Sun amongst the Chinese emigrants in foreign countries. It is reported in well-informed circles that as a matter of fact, wealthy and prominent Chinese merchants and others in the Dutch East Indies and other South Pacific islands are tired of Dr. Sun's demands for financial aid without adequate returns. It is estimated by a Kuomintang leader who is "in the know" that during the last thirty years of Dr. Sun's revolutionary activities, the Chinese merchants and others in foreign countries, especially those in the Dutch and British colonies, have contributed no less than twenty million dollars for his cause."

Japan and Her Troubles

Japan seems to be concerned over her official position in China and Russia. However, late reports have it the boycott on Japanese goods in China is being carried out in a much slighter degree. Japan feels she must set the Powers an example in China and that an economic policy is much



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better than a military policy in dealing with China. She is also now wondering if Joffe is going to be replaced.

Japan Pays for Concessions

The anti-Japanese situation in China is growing more grave. Not only is the Sino-Japanese treaty of commerce trampled underfoot but Japanese residents in that country are subjected to insults and persecution. This state of things cannot be tolerated by this country; says the *Chung Shingyo*. The Japanese Chambers of Commerce in China and in Japan and other business organizations have for some time been discussing ways and means to meet the situation and declarations, urging the Japanese government to take effective steps to put an end to the present intolerable situation.

"It is high time Japan was seriously considering the future line of policy to be adopted towards China. In our opinion, it is advisable to supplant military strength by money power in improving the Sino-Japanese economic relations for the future. Silver controls the Chinese market, and consequently it seems wise to create in various places in Japan and China silver funds amounting to several hundred million yen by utilizing the specie Japan holds abroad, and that with these funds the monetary circulation in China should be helped and the Chinese economic circles be maintained with a view to making China's commerce and industry prosper. The Chinese people value practical interests before everything, and if the policy we suggest convinces them of the benefits of keeping up relations with Japan, the Sino-Japanese relations will be gradually improved. At any rate, it is most important for Japan, who must depend on her own industrial prosperity for her future destiny, to establish close monetary relation with China. We believe that this policy will contribute greatly to the future economic prosperity and peace of the two countries. Japan's policy towards China must be recast quickly, and special attention must be directed towards establishing the closest economic relations between the two nations."

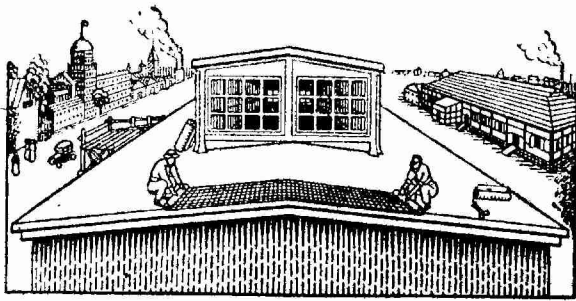
"It is, of course, partly due to the geographical contiguity and the commonness of the race and scripts used by their nationals that Japan has implanted much influence in China and has forged inseparably close economic relations with that country, but at the same time it is admitted that her remarkable economic development in recent years is largely the result of the successful wars Japan has waged in the past. In short, Japan owes much of her economic development to her mighty military strength. A revolutionary change has come over the sentiment and ideas of the peoples of the world since the war, and it has become no longer possible for any country to secure her economic development by military force. In pursuance of the agreements reached at the Washington conference Japan has handed back Tsingtao to China, evacuated Shanghai, abolished the Japanese postoffices in China and withdrawn the Japanese garrisons from China, and the execution of these measures has had the effect of suddenly diminishing Japan's influence in China. Reaction soon appeared in the rise of anti-Japanese agitations in many parts of that country, where many Chinese students and outlaws have committed excesses against Japanese interests on the pretext of working for the recovery of Port Arthur and Dairen. The anti-Japanese sentiment runs highest along the Yangtse, where Japanese lives and property are exposed to grave danger.

GENERAL NEWS SUMMARY

July 19. British reply to Germany regarding reparations is still under consideration and draft of note will be communicated to the Allies.—Entire Philippine Cabinet resigns, following differences with the Governor General on matters relating to internal government.—At plenary sittings at Lausanne Conference all agreements reached between Allies and Turkey are confirmed and Peace Treaty is to be signed on July 24.—U. S. Senator Brookhart of Iowa is concerned over price of wheat in middle West and the continued drops in price.

July 20. Dockers strike in England is spreading to Liverpool and work of loading steamers has stopped.—British trade exports have been affected by uncertainty of situation in Europe.—Much alarm is expressed in Japanese press over decision on Singapore Base in House of Commons.—Note circulation in Germany now totals Mk. 20,241,000,000 and during July average prices increased by 140 percent.

July 21. Britain's reply to Germany is deferred until next week.—France seems to be meeting with less resistance in the Ruhr district and considerable increase of passengers is reported in Ruhr Valley.—Secretary of War Weeks cables



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for complete official report on crisis in administration of affairs in Philippines which came as a result of resignation of the Cabinet.—Five Egyptians sentenced to die, being convicted of conspiring to kill British officials.

July 22 Alaska report says President Harding and party leave on return trip to United States.

July 23 Allied Powers receive copies of Britain's reply to Germany for perusal.—In a controversial reply to the Lausanne Conference, Russia agrees to sign the Straits Convention.—General Villa, famous Mexican rebel leader, is shot dead by his followers as a result of disputes over wages.—Irish Free State elections will be held about end of August.

July 24 Idaho report says Senator William Borah says present trend in American politics is toward political revolution.—Chinese Envoy to London says change and upheaval in China is due to change from Monarchy to Republic.

July 25 In House of Commons the debate on disarmament was initiated and members asks Britain to call new Disarmament Conference.

Weekly Cotton Market Report

By A. B. Rosenfeld & Son

China Cotton:—Since writing our last report a week ago this morning, the cotton market has experienced a sharp decline with a panicky appearance at one time for the "fall" positions, and generally a soft undertone notwithstanding repeated attempts to bring about speculative scares at the "Exchange" by combined efforts of Tungchow and Cotton Yarn Dealers.

As to the new crop, we think that with the exception of scattered localities, in Zung Ming and Tungchow, along the rivers that were out of their banks during the torrential rains, the outlook may almost be called "average." The past week's weather has been favorable for the plant and fairly good headway has been made practically throughout the entire cotton belts. Whatever the ultimate outturn may

be, we consider the present indications are for an average crop, and we cannot, therefore, feel bullish on the situation in the long run. Without a crop disaster we may see low prices for the raw material before Christmas.

Yarn:—During the past week there has been no change in the fundamental conditions of the yarn market. Fluctuations were within narrow limits and with a steady tendency at the close of the week. In all some 9,000 to 10,000 bales of all counts have been booked for export to Szechuen, Canton, Kiangse, Swatow, Fukien, Chefoo, Yingkow, Wuhu, Weihaiwei, Tsingtao, Hankow and Newchwang and over 1,000 bales direct business with the Mills have been recorded.

Liverpool, July 19, 1923.

Liverpool Market:—

Middling American, Spot.....	15.56 Pence
" " October.....	13.17 "
" " January.....	12.61 "
Market:—Steady.	

New York, July 19, 1923.

New York Market:—October.....	23.80 Cents
December.....	23.36 "
January.....	23.12 "
March.....	23.15 "
May.....	23.06 "
Spot.....	27.35 "
Market:—Steady.	

Bombay, July 19, 1923.

Bombay Market:—

Broach, F. G. July/Aug.....	Rps. 522 per Khandy
Fully Good Bengal, July.....	" 459 " "
Fine Oomra, Dec./Jan.....	" 431 " "
Market:—Steady.	

Shanghai Market:—

Tungchow, Spot.....	Tls. 42.00
Shanghai, Spot.....	" 37.00
M-ginned, Spot.....	" 37.50
Taichong, Spot.....	" 39.00
Shensi, No 1 Spot.....	" 40.00
Market:—Steady.	

Shanghai Exchange for Week Ending Wednesday, July 18th, 1923.

By Maitland, Fearon and Brand

Exchange:—The London price of silver at 30 $\frac{7}{8}$ is $\frac{3}{4}$ d. lower than last week. The rate for two months forward is quoted 30 $\frac{1}{4}$ d.

Our official rate for T/T on London after remaining at 3/0 $\frac{1}{2}$ d. throughout the week is at the close 3/0d, a drop of $\frac{1}{2}$ d. since our last circular. During the week a good amount of Export Paper has been on the market and on two days our local Gold Dealers have appeared as sellers of Gold T/T. The demand for Gold T/T has been good, but the fall in our exchange rates, we are inclined to think, is due to the fact that at present prices silver can be obtained in large quantities without much fear of raising the price. Our stock of silver although lower than at this time last year, appears to be adequate for present commercial requirements. Including 1700 Bars of silver due to-day, silver to the value of about Tls. 5,000,000 is due before the end of the month and it is reported that a further Tls. 5,000,000 may be expected in August. Fairly large purchases of silver have also been made by China from America for delivery Oct./Dec. Under these circumstances an advance in our exchange is improbable and rates should show a tendency to go below the parity of silver. At the close however our open market was steady with $\frac{1}{4}$ d. over official quotations offering for T/T on London for July, $\frac{3}{4}$ d. for August and $\frac{1}{4}$ d. for September.

Our stocks of silver are reported as follows:—

Sycee and Bar Silver Tls. 24,322,000 an increase of Tls. 372,000.

Chinese and Mexican Dollars..... \$ 33,480,000 a decrease of \$ 1,420,000.

Estimated value Tls. 48,427,000 as against Tls. 60,495,000 held at this time last year.

	Average rates for June	Thursday July 12	Friday July 13	Saturday July 14	Monday July 16	Tuesday July 17	Wednesday July 18
Bk's selling rates		opening closing	opening closing	opening closing	opening closing	opening closing	opening closing
T/T London	3.1.210	3/0 $\frac{1}{2}$ 3/0	3/0 $\frac{1}{2}$	3/0	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$ 3/0
D/Dita. "	—	3/0 $\frac{1}{2}$ 3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$ 3/0 $\frac{1}{2}$
4m/s "	—	3/0 $\frac{1}{2}$ 3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$	3/0 $\frac{1}{2}$ 3/0 $\frac{1}{2}$
T/T India	230.600	225 $\frac{1}{2}$ 224	224	222 $\frac{1}{2}$	224	224	224 222 $\frac{1}{2}$
T/T France	1,132.600	1175 1165	1170	1175	1185	1190	1185 1180
T/T N. Y.	71.540	69 $\frac{3}{4}$ 69 $\frac{1}{4}$	69 $\frac{1}{4}$	69	69 $\frac{1}{4}$	69 $\frac{1}{4}$	69 $\frac{1}{4}$ 69
T/T H'kong	73.790	74 $\frac{1}{2}$ 74 $\frac{1}{2}$	74 $\frac{1}{2}$	74 $\frac{1}{2}$	74 $\frac{1}{2}$	74 $\frac{1}{2}$	74 $\frac{1}{2}$ 74 $\frac{1}{2}$
T/T Japan	68.680	70 $\frac{1}{2}$ 70 $\frac{1}{2}$	70 $\frac{1}{2}$	71	70 $\frac{1}{2}$	70 $\frac{1}{2}$	70 $\frac{1}{2}$ 71
T/T Batavia	186.680	182 180 $\frac{1}{2}$	181	180	181	181	181 180
T/T Straits	75.580	76 $\frac{1}{2}$ 77 $\frac{1}{2}$	77 $\frac{1}{2}$	77 $\frac{1}{2}$	77 $\frac{1}{2}$	77 $\frac{1}{2}$	77 $\frac{1}{2}$ 77 $\frac{1}{2}$
Bk's buying rates							
4m/s B/L. }	3/3.210	3/1 $\frac{1}{2}$ 3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$ 3/1 $\frac{1}{2}$
Cred. D/A }	—	3/2 3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$	3/1 $\frac{1}{2}$ 3/1 $\frac{1}{2}$
4m/s " D/P	3/3.710	3/2 $\frac{1}{2}$ 3/2	3/2	3/1 $\frac{1}{2}$	3/2	3/2	3/1 $\frac{1}{2}$ 3/1 $\frac{1}{2}$
6m/s " D/A	—	3/2 $\frac{1}{2}$ 3/2	3/2	3/1 $\frac{1}{2}$	3/2	3/2	3/1 $\frac{1}{2}$ 3/1 $\frac{1}{2}$
4m/s B/F. }	1,182.600	1225 1215	1220	1225	1235	1240	1235 1230
C. D/A D/P }	—	1225 1215	1220	1225	1235	1240	1235 1230
4m/s N.Y. Lc.	74.540	72 $\frac{1}{2}$ 71 $\frac{1}{2}$	71 $\frac{1}{2}$	71 $\frac{1}{2}$	72	72	72 71 $\frac{1}{2}$
4m/s " Docs	—	72 $\frac{1}{2}$ 72 $\frac{1}{2}$	72 $\frac{1}{2}$	72	72 $\frac{1}{2}$	72 $\frac{1}{2}$	72 $\frac{1}{2}$ 72

Based on Daily Official quotation, higher rate taken on rising Market, lower when falling Market.

* London Price of Bar Silver per oz. (English Standard 925 touch) Pence.

† N. Y. Price of Bar Silver per oz. (Pure)

Shanghai Price of Gold Bars (weight Tls. 10 (Chauping) 978 touch

Shanghai Silver Bars (weight Tls. 100 (C.) 999 touch)

Shanghai Mexican Dollars per \$100 Native Bank Rate of Interest (Call money)

* Closing Price in London for Previous day

** Closing Price in New York for Previous day

Bank of England rate of discount
Bank of France rate of discount
London open Market of rate Dis. 3 m/s.

4%
4 $\frac{1}{2}$ %
3 $\frac{1}{8}$ %
3 $\frac{1}{8}$ %
3 $\frac{1}{8}$ %

London on Paris T/T 79.15
London on Germany T/T 1000,000
New York on London T/T 459 $\frac{1}{2}$
Bombay on London T/T 1/3 $\frac{1}{8}$
Hongkong on " T/T 2/2 $\frac{1}{2}$
Yokohama " " T/T 2/1 $\frac{1}{8}$



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New Books and Publications

The South Sea Islands Again

Atolls of the Sun, by Frederick O'Brien. The Century Company; New York, 1922.

IN "Atolls of the Sun," Frederick O'Brien is again at his best. It is the third and last of his South Sea adventure series. The previous book published, "Mystic Isles of the South Seas," really the first in the series, was a disappointment after "White Shadows in the South Seas," which was a best-seller in America and made O'Brien famous. Perhaps "Mystic Isles" appeared too soon after "White Shadows." At any rate, "Atolls of the Sun" is fully as good as "White Shadows," and possibly it is even better. As in all of O'Brien's books, there are more than half a hundred illustrations, many of which are extremely beautiful.

O'Brien has a generous sprinkling of Irish, and knowing well to mix humor and pathos in spinning a yarn, he is a prince of story-tellers. Like a true Irishman, he is not afraid to use imagination in filling in the details of a story. Besides, he is poetic, well-educated, widely travelled, and has associated with the best and worst of humanity. O'Brien has lived and understands, and he can tell, with the result that his books have pages of interest for almost every reader.

"Atolls of the Sun" has many stories scattered throughout it at well-chosen intervals. There is Lewellyn's tale, the love affair of Mademoiselle Narbonne and the German Lutz, the story of Peyral and his daughter, and many others, any of which would make an excellent magazine story.

There is plenty of adventure,—O'Brien's experience with the water-spout, his wild bull hunt, his pearl-fishing. Traveling on steamer, schooner and canoe through the treacherous South Seas, O'Brien had many a thrill, and he gives the reader similar thrills in the telling them.

"Atolls of the Sun" has much of interest to the student. There are many pages of history. There are accounts of religious struggles between Catholic, Protestant, Mormon and native superstitions. There is a chapter on Polynesian languages, and on almost every page, is description of the flora and fauna of those far away islands.

There may be some criticism of O'Brien's books, especially his pictures, that they border very near the pale of immorality. Perhaps a youth might find the pictures and some of the text piquant, but the mature reader will find no such sensation, because of the naturalness and simplicity of O'Brien's portrayal of the hearts of the child-like inhabitants of the South Seas.

It is understood that O'Brien has contracted with the Century Company to write three books, probably in the Orient. He is expected shortly in China, so that his books to date should be of especial interest as a means of getting acquainted with the man who is likely to produce a best-seller, a year or two hence, on China and the Chinese.

R. B. L.

France Germany and America

Neighbors Henceforth by Owen Wister. MacMillan Company, London, 1922.

THE plight of France, the deed of Germany, and the international destiny of the United States, are the main themes of this volume, which closes a series of three, begun with *The Pentecost of Calamity*, followed by *A Foreign Deal*.

The author has handled each theme with force and piercing judgment. A most sympathetic analysis of the France of today has been accomplished. Every chapter is filled with the spirit of the French people—their sorrows and their triumphs are alike vividly portrayed. In contrast with the author's deep admiration for France is his scathing indictment of her foe—Germany. His criticisms are based on statistics, interviews, and on personal observations made in France.

In the light of the war plight of France, and the conclusion of Germany has the national destiny of the United States been solved. The question has been raised and the

solution given—given in a most impartial and just manner—sane and satisfactory. Many readers will not agree with this solution but they must at least agree that Mr. Wister's conclusions are based on sound principles.

The book as a whole has evidently been prompted by the writer's recent tour of France. It is written by a staunch friend of the French people. In places it is unnecessarily minute as to geographical names and burdened with many details of unimportant descriptions. At times Mr. Wister reminds one vaguely of Baedeker.

The theme of *Neighbors Henceforth* is not new nor is it handled with noticeable freshness. The facts are there for the person who cares to study them and are clearly stated. There is no doubt as to the author's position. This book at first sight seems to be merely a war book four years delayed—Mr. Wister's purpose, however, is to stem the tide of criticism of the Versailles Treaty, and to defend the action of France in insisting upon the payment of reparations by Germany for its unprecedented and unnecessary destruction upon French soil. In this he succeeds very fairly well.

Hazel MacNair

St. John's University, June 17, 1923.

China's Raw Materials

The Principal Articles of Chinese Commerce by Ernest Watson, Chief Appraiser, Chinese Maritime Customs. Published by the Statistical Department of the Inspectorate General of Customs: Shanghai: 1923. Price \$10.

FOR the use of the examining branch of the Chinese Maritime Customs, the inspector general sometime ago ordered the compilation of a volume containing a description of the origin, appearance, characteristics, and general properties of all commodities of Chinese commerce, an account of the methods of preparation or manufacture, together with various tests by means of which different products may be readily identified. Mr. Watson, to whom the task was intrusted, has ably performed that duty as evidenced by the six hundred page book which is just off the press.

The work is a scholarly one, and should prove a source of great assistance for many years to come, not only to the Customs staff, but to merchants engaged in business in China.

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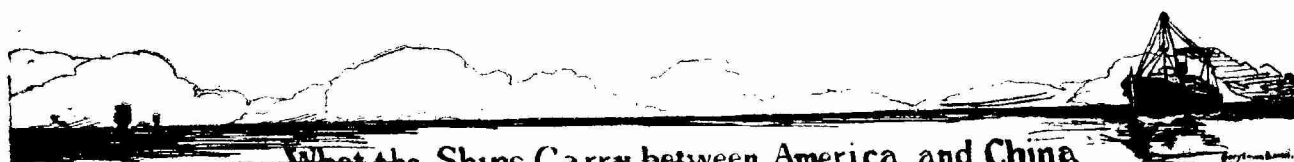
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1923

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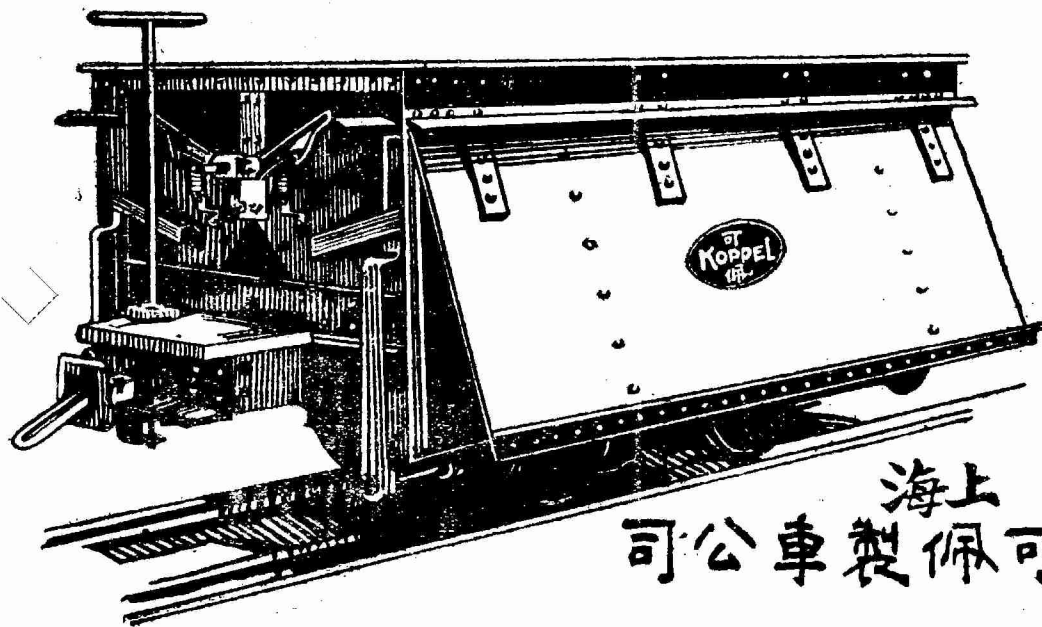


What the Ships Carry between America and China

Returns of the Shanghai Customs

(Key: Pls.—1 Picul or 133 1/3 pounds; Bls.—Bales; Pcs.—Pieces; Mils.—thousands; Hk. Tls.—Hankow Tls., Customs Rate Tls. June 1-21 equal Gold \$)

S. S. City of Peking, from U. S. A., June 23.	Shanghai Bls. 9 Pls. 27.58	Carpets Hk. Tls. 3,818	Gunpowder, Kiukiang Pls. 1
Waterproof Cloth Yds. 251	To Boston.	S. S. President Grant, from U. S. A., June 25.	Gunpowder, Ningpo. 343
Embroidery, Cotton Pls. 92	Tea, Black, Kiukiang 67	Waterproof Cloth Yds. 2,173	Gunpowder, other Ports 1
Cotton Yarn, Grey, Counts over 45 9	Tea, Black, other Ports 16	Iron Bars Pls. 3,867	Young Hyson, Kiukiang 30
Iron Nails, Wire 2,321	Intestines, Pigs, Salted 17	Bones, Cow Pls. 334	Young Hyson, Other Ports 61
Iron Pipe Fittings 118	Carpets Hk. Tls. 317	Butter 130	Hyson, Kiukiang 11
Iron Tacks 38	To Buffalo.	Cheese 2	Egg Albumen, Dried 166
Iron, Galvanized:	Intestines, Pigs, Salted. Pls. 105	Milk, Evaporated 950	Egg Yolk, Dried 419
Sheets, Plain 3,730	To Chicago.	Motor-cars Pcs. 16	Feathers, Goose 166
Sheets, Corrugated 880	Silk, Raw, Filature:	Canned Fish Doz. 80	Straw, Braid, White 14
Wire Rope 274	Wild, other Ports,	Glass, Window, Col- ored Sq. ft. 305	Skins, Goat, Tanned Pcs. 5,478
Spring Steel 1,001	Bls. 48 48.32	S. S. Empress of Australia, June 30.	Skins, Dog 5,852
Tinned Plates, Plain 1,015	Tea, Black, Hankow 81	To Darby.	Skins, Kid 4,000
Bones, Cow 120	Tea, Green:	Silk, Waste:	Skins, Sheep 2,540
Bronze Powder 19	Gunpowder, Ningpo 962	Other Ports, Bls. 123. Pls. 384.53	Skins, Weasel, with Tails 4,000
Dextrine 14	Hyson, Ningpo 308	To Scranton,	Tails 7,000
Grease 199	To Kansas City.	Silk, Raw, Re-reeled:	S. S. Pomona, to Seattle, June 1.
Gum, Arabic 10	Tea, Black, Kiukiang Pls. 25	White, other Ports,	Oil, Wood Pls. 12,161
India rubber 3	Tea, Green:	Bls. 42 42.84	S. S. Egremont Castle, from U. S. A., June 26.
Leadfoil and Tinfoil 102	Gunpowder, Ningpo 189	Silk, Raw, Filature:	Cotton Duck Yds. 1,431
Leather, Kid 1	To South River.	Wild, other Ports, Bls.	Cotton Towels, Turkish Pls. 1
Paper, Writing 48	Silk, Waste:	10 10.20	Iron Tubes 500
Paper, Unclassed 1,141	Other Ports Bls. 72 242.14	To Baltimore.	Iron, Galvanized:
Soda, Silicate of 149	To New York.	Egg Albumen, Dried Pls. 132	Tubes 419
Tobacco, Leaf 2,086	Silk, Raw, Steam Filature:	Egg Yolk, Dried 168	Steel, Bamboo 1,494
Tobacco, Prepared 1	White, Shanghai, Bls.	Straw Braid, White 14	Tinned Plates, Plain 440
Clocks Pcs. 57	489 489.66	To Boston.	Bones, Cow 375
Machines, Sewing 6	Silk, Raw, Filature:	Tea, Black, Kiukiang 99	Cheese Pls. 1
Typewriters 4	Wild, other Ports Bls.	To Chicago.	Dextrine 315
Canned Fruits Doz. 30	102 102.71	Tea, Green:	Leather, Kid 1
Canned Meats 86	Silk, Raw, not Filature:	Gunpowder, Ningpo 1,006	Paper, Art Printing 335
Oil, Lubricating Galls. 62,971	Wild, other Ports, Bls.	To New York,	Paper, Cardboard 46
Oil, Unclassed 1,970	20 20	Silk, Raw, Steam Filature:	Paper, Tissue 28
Turpentine, Mineral 120	Cotton Waste 216	White, Shanghai, Bls.	Paper, Writing 221
Cigarettes Mille 69,625	Tea, Black, Hankow 411	175 173.45	Paper, Unclassed 1
Cigars Mille 15	Bristles 128	White, other Ports,	Soda, Bicarbonate of 260
Machinery Hk. Tls. 15,269	Camphor 154	Bls. 31 30.45	Soda, Caustic 2,339
S. S. President Pierce, from U. S. A., June 23.	Egg Albumen, Dried 545	Silk, Raw, Filature:	Tobacco, Leaf 13
Turpentine, Vegetable Galls. 167	Egg Whole, Dried 123	Wild, other Ports, Bls.	Wax, Paraffin 1,114
S. S. President Jefferson, June 29 To Seattle.	Egg Yolk Dried 825	63 63.43	Scales 451
Tea, Green:	Hair, Human 10	Silk Pongees, Shantung 0.88	Shoes Pairs 1,772
Gunpowder, Ningpo Pls. 19	Rhubarb 55	Tea, Black, Hankow 730	Hats Doz. 5
Egg, Whole, Frozen 365	Straw, Braid, White 17	Tea, Black, Kiukiang 306	Underwear 36
Egg, Yolk, Moist 111	Turmeric 330		
Carpets Hk. Tls. 817	Skin Mats, Dog Pcs. 5,000		
To Darby.	Skins, Dog 4,021		
Silk Cocoons, Refuse.	Skins, Goat, Tanned 3,000		
	Skins, Kid 6,000		
	Skins, Lamb 7,500		
	Skins, Sheep 5,700		
	Skins, Squirrel 30,000		



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In The United States Court for China

(Established by Act of Congress of June 30, 1906.)

JUDGE, Charles S. Lobingie.
U.S. ATTORNEY, Leonard G. Husar.
U.S. COMMISSIONER, Nelson E. Lurton.
CLERK, William A. Chapman.

OFFICE HOURS 10-12; 2-4.

U. S. MARSHAL, } Thurston R. Porter.
DISBURSING OFFICER, }
PRISON PHYSICIAN, DR. T. B. Dunn.
DEPUTY MARSHAL, Wm. Van Buskirk.

TIENSIN:

SPECIAL DEPUTY MARSHAL, Harry V. Fuller

All Notices, Announcements, Judgments, Orders and other Proceedings appearing in this department of THE WEEKLY REVIEW may be accepted as authentic.

MOTION DAY.

All contested motions and demurrers will hereafter be heard on Mondays, beginning at 3 P. M.; provided notice thereof with proof of service on the adverse party or his attorney shall have been filed in the clerk's office by 12 Noon of the preceding Saturday.

ADMISSION TO THE BAR.

Hereafter, applicants for admission to the bar of this court, whether previously admitted elsewhere or not, will be examined on the following:

1. Extraterritoriality, 25 Corpus Juris, 299-331.
2. Extraterritorial Cases.
3. Extraterritorial Remedial Code.
4. U. S. Rev. Stats., secs. 4083-4131 (Act of Congress of June 22, 1860, 12 U. S. Stats. at Large, Ch. 179.)
5. China Court Regulations.
6. Act of Congress of June 30, 1906 (34 U. S. Stats. at Large, Ch. 3934).

BAR EXAMINING { Nelson E. Lurton.
COMMITTEE: { W. W. Blumie
Roland S. Haskell.

Shanghai, China, January 2, 1923.

Minutes of Recent Proceedings

Hearings:

- July 23, 1923, Cause No 2275, In re The Kearny Co. Inc., a bankrupt; on motion to set aside Court's order adjudicating petitioner bankrupt; submitted.
- " 23, " " " 1870, Doong Yih & Co. v. Russia Insurance Co. of America; on demurrer; submitted.
- " 23, " " " 2220, Tsingtao Cold Storage Co., Ltd. v. L. H. Smith & Co.; on demurrer; submitted.
- " 23, " " " 2226, Geo. A. Mayer v. L. D. Kearny et al.; motion for judgment; testimony taken of Geo. A. Mayer; submitted.
- " 23, " " " 2210, L. Samarcq and R. Fermus v. Asia Banking Corporation; motion to strike out demurrer and to set; submitted.
- " 23, " " " 2053, In re Assignment of Cosmos Commercial Corporation; motion objecting to report of assignee; passed.
- " 23, " " " 2283, U. S. v. Wm. Connor C. Hansen, J. E. Filen; arraignment; plea of not guilty; continued.

THE STEAMSHIP CASES

(Continued from last week)

The defendants further contend that the Amendment covers foreign merchant ships when within the territorial waters of the United States. Of course, if it were true that a ship is a part of the territory of the country whose flag she carries, the contention would fail. But, as that is a fiction, we think the contention is right.

A merchant ship of one country voluntarily entering the territorial limits of another subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence, just as with other objects within those limits. During her stay she is entitled to the protection of the laws of that place and correlatively is bound to yield obedience to them. Of course, the local sovereign may out of considerations of public policy choose to forego the extension of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely in its discretion. The rule, now generally recognized, is nowhere better stated than in the case¹¹ where Chief Justice Marshall, speaking for this Court, said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

"All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

* * * * *

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him, nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter can never be construed to grant such exemption."

That view has been reaffirmed and applied by this Court on several occasions.¹² In one case the court added:

"Indeed, the implied consent to permit them (foreign merchant ships) to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose."¹³

11. The Exchange, 7 Cranch, 116, 136, 144.
12. United States v. Diekelman, 92 U. S. 520, 525, 526; Wildenhus' Case, 120 U. S. 1, 11; Nishimura Ekiu v. United States, 142 U. S. 651, 659; Knott v. Botany Mills, 179 U. S. 69, 74; Patterson v. Bark Eudora, 190 U. S. 169, 176, 178; Strathearn S. S. Co. v. Dillon, 252 U. S. 348, 355-356. And see Buttfield v. Stranahan, 192 U. S. 470, 492-493; Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320, 324; Brolan v. United States, 236 U. S. 216, 218.
13. Patterson v. Bark Eudora, 190 U. S. 178, 47 L. ed., 1007.

(Before the Commissioner)

July 21, 1923, Crim. No.	459,	U. S. v. James E. Filem, W. Connor and Chris Hansen; testimony taken of Toney Anastossi, L. Gorlin, C. Doyle, J. A. MacKenzie, G. E. Walsh, D. Warner, A. Masnik, J. E. Filem, C. Hansen; submitted.
" 21, " " "	460,	U. S. v. L. C. Solomon; plea of guilty.
" 21, " " "	462,	U. S. v. Lee Qui; testimony taken of J. Ferentson; submitted.
" 21, " " "	463,	U. S. v. J. R. Gavin; testimony taken of G. H. Parry and Juliana Pechura; submitted.
" 24, " " "	464,	U. S. v. Chas. H. Rex; plea of guilty.

Judgments and Orders:

July 20, 1923, Cause No.	1559,	In re estate of Joseph Seymour, deceased; order authorizing sale of interest in certain lots.
" 21, " " "	2021,	Kitty Ren v. American Drug Company; judgment for plaintiff.
" 21, " " "	1800,	Banque Belge pour l'Etranger v. Montgomery, Ward & Co.; order sustaining objection to surety on supersedeas bond.
" 23, " " "	417,	Newman v. Zimmerman; order overruling motion for execution.
" 24, " " "	1032,	Belgian Trading Co. v. Neuss, Hesslein & Co.; order overruling motion to dismiss and setting for final hearing.
" 24, " " "	1870,	Doong Yih & Co. v. Russia Insurance Co. of America; order allowing plaintiff thirty days from July 23 to file amended petition.
" 24, " " "	2220,	Tsingtao Cold Storage Co. Ltd. v. L. H. Smith & Co.; order overruling demurrer.

(By the Commissioner)

July 21, 1923, Crim. No.	459,	U. S. v. James E. Filem, W. Connor and Chris Hansen; sentence, order binding accused over for trial before U. S. Court.
" 21, " " "	460,	U. S. v. L. C. Solomon; defendant assessed costs and warned.
" 21, " " "	462,	U. S. v. Lee Qui; sentence.
" 21, " " "	463,	U. S. v. J. R. Gavin; sentence.
" 24, " " "	464,	U. S. v. Chas. H. Rex; sentence.

Assignments for Hearing:

Sept. 24, 1923, 9:30 a.m., Cause No. 1032, Belgian Trading Co. v. Neuss, Hesslein & Co.

In principle, therefore, it is settled that the Amendment could be made to cover both domestic and foreign merchant ships when within the territorial waters of the United States. And we think it has been made to cover both when within those limits. It contains no exception of ships of either class and the terms in which it is couched indicate that none is intended. Such an exception would tend to embarrass its enforcement and to defeat the attainment of its obvious purpose, and therefore cannot reasonably be regarded as implied.

In itself the Amendment does not prescribe any penalties, forfeitures or modes of enforcement, but by its second section¹⁴ leaves these to legislative action.

With this understanding of the Amendment, we turn to the National Prohibition Act¹⁵ which was enacted to enforce it. The Act is a long one and most of its provisions have no real bearing here. Its scope and pervading purpose are fairly reflected by the following excerpts from Title II:

"Sec. 3. No person¹⁶ shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented...."

"Sec. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance...."

"Sec. 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, ... any liquor ... in violation of this title is guilty of a nuisance...."

"Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law...."

Other provisions show that various penalties and forfeitures are prescribed for violations of the Act; and that the only instance in which the possession of intoxicating liquor for beverage purposes is recognized as lawful is where the liquor was obtained before the Act went in effect and is kept in the owner's dwelling for use therein by him, his family, and his *bona fide* guests.

As originally enacted the Act did not in terms define its territorial field, but a supplemental provision¹⁷ afterwards enacted declares that it "shall apply not only to the United States but to all territory subject to its jurisdiction," which means that its field coincides with that of the Eighteenth Amendment. There is in the Act no provision making it applicable to domestic

14. The second section says: "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation." For its construction, see *United States v. Lanza* (December 11, 1922).

15. 41 U. S. Stats at Large, 305, ch. 85.

16. The Act contains a provision (sec. 1 of Title II) showing that it uses the word "persons" as including "associations, copartnerships and corporations" when the context does not indicate otherwise.

17. Section 3, Act November 23, 1921, Ch. 134, 42 U. S. Stats. at Large, 222.

Miscellaneous Filings:

July 18, 1923,	Cause No. 1861,	Luk Hop Company v. American Express Company; defendant's brief.
" 18, "	" 2254,	Koh Shun Kee v. Block & Company; answer.
" 18, "	" 2282,	China-American Trading Co. Inc. v. The Fearon, Daniel Company; complaint; appearance of counsel for defendant.
" 19, "	" 2275,	In re The Kearny Co. Inc., a bankrupt; motion to set aside order of July 11, 1923.
" 19, "	" 2210,	L. Samarcq and R. Fermus v. Asia Banking Corporation; motion to strike demurrer and to set for trial.
" 20, "	" 1852,	Ping Kee v. Firemen's Fund Insurance Co.; defendant's brief.
" 20, "	" 2220,	Tsingtao Cold Storage Co. Ltd. v. L. H. Smith & Co.; motion for argument on demurrer.
" 20, "	" 2226,	George A. Mayer v. L. D. Kearny et al; motion for judgment.
" 20, "	" 1870,	Doong Yih & Co. v. Russia Insurance Co. of America; motion for argument on demurrer.
" 20, "	" 2184,	Y. Ching Mow & Co. v. C. Romero; discontinuance.
" 20, "	" 2278,	U.S. v. E. Stein; marshal's return of search warrant.
" 20, "	" 2252,	U. S. v. L. D. Kearny; marshal's return of search warrant.
" 20, "	" 1559,	In re estate of Joseph Seymour, deceased; petition.
" 21, "	" 2053,	In re assignment of Cosmos Commercial Corporation; motion objecting to report of assignee.
" 21, "	" 1355,	Universal Leaf Tobacco Co. v. Barber Steamship Lines, Inc.; satisfaction of judgment.
" 23, "	" 2283,	U. S. v. Wm. Connor; Christian Hansen; J. E. Filer; information.
" 23, "	" 2053,	In re assignment of Cosmos Commercial Corporation; notice for withdrawal of notice of objection.
" 23, "	" 2020,	Russia-Asiatic Bank v. Max Wulfsohn & Co.; motion to take depositions.
" 23, "	" 2021,	Kitty Ren v. American Drug Company; notice of appeal; motion for stay of execution.
" 24, "	" 2284,	Dung Bar Nien etc. v. The Robert Dollar Co.; complaint; summons issued; marshal's return of summons.
" 24, "	" 2285,	Vanderhill v. Vaederhill; petition; motion.
" 24, "	" 2176,	In re Warren W. Hicks' will; affidavit of publication.

(By the Commissioner)

July 17, 1923,	Crim No. 459,	U. S. v. J. E. Filer, Wm Connor, Chris. Hansen; complaint.
" 19, "	" 460,	U. S. v. L. C. Solomon; complaint.
" 19, "	" 461,	U. S. v. A. E. Taylor; complaint.
" 20, "	" 462,	U. S. v. Lee Qui; complaint.
" 20, "	" 463,	U. S. v. J. R. Gavin; complaint.
" 24, "	" 464,	U. S. v. C. H. Rex; complaint.
" 24, "	Civ. " 126,	Atkinson & Dallas v. C. Berthel & Co.; petition; summons issued.

merchant ships when outside the waters of the United States, nor any provision making it inapplicable to merchant ships, either domestic or foreign, when within those waters, save in the Panama Canal. There is a special provision dealing with the Canal Zone¹⁸ which excepts "liquor in transit through the Panama Canal or on the Panama Railroad." The exception does not discriminate between domestic and foreign ships, but applies to all liquor in transit through the canal, whether on domestic or foreign ships. Apart from this exception, the provision relating to the Canal Zone is broad and drastic like the others.

18. The pertinent portion of section 20 of Title III, relating to the Canal Zone, is as follows:

"Sec. 20. That it shall be unlawful to import or introduce into the Canal Zone, or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt, or spirituous liquors, except for sacramental, scientific, pharmaceutical, industrial, or medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: *Provided*, That this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad."

(To be continued next week)

In the United States Court for China

JOHN WILLIAM COLBERT,
Plaintiff,

—v.—

CLAIRE CUTTS COLBERT,
Defendant.

Cause No. 2272

Civil No. 825

SUMMONS

The President of the United States of America
to the United States Marshal for China and his Deputies:

GREETING:

You are hereby commanded to serve this Summons and a copy of the complaint in the above entitled action upon the defendant—

Claire Cutts Colbert

if found within the jurisdiction of this Court and to notify her to be and appear before this Court on or before the sixtieth day after service hereof to file her written answer on oath.

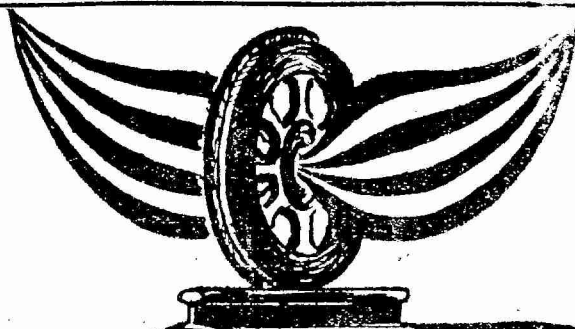
(SEAL)

WITNESS the HONORABLE CHARLES S. LOBINGIER,
Judge of the United States Court for China, at
Shanghai, China, July 7, 1923.

W. A. CHAPMAN

Clerk.

Excerpt from Regulations, Section 8: On proof of due notice, judgment by default shall be procured against any defendant failing to appear and file his written answer as required.



CHINESE GOVERNMENT RAILWAYS

Shanghai-Nanking Railway Abridged Time Table.

Shanghai North to Nanking—Up													(Main Line)													Nanking to Shanghai North—Down												
STATIONS	Local	Fast H.	Local	3rd & 4th Local	S.M.L. P.L. Express Mail	3rd & 4th	Local	S.M.L. P.L. Fast Express	Local	Fast Local	Local	Local	Night Ex- press H. S.	STATIONS	Local	Fast Local	Local	Local	Fast H.	3rd & 4th Local	3rd & 4th	Fast H.	Local	Local	Ex- press H.	Local	7 P.M. Mail	High Speed										
Shanghai North d.		7.00	7.15	7.35	9.30	9.50	12.10	12.30	15.25	17.15	17.45	19.35	21.30	Peking ... d.															1521									
Nansiang ... d.		7.28	7.45	8.03	—	10.31	12.41	12.58	16.01	17.47	18.15	20.05	0.02	Tientsin East ... a.														1435	2027									
Soochow ... d.		8.59		9.41	11.14	12.53		14.43	18.24	19.39			1.39	Do ... d.																								
Wush ... d.	7.00	9.59		10.44	12.02	14.12		15.38	19.34	20.56			2.38	Tientsin Central ... a.														26.6	45									
Changchow ... d.	8.14	10.56		11.41	12.49	15.28		16.38		21.38			3.42	Do ... d.														45	120									
Tanyang ... d.	9.30	11.52			13.38	16.28		17.38						Tsiananfu ... d.														45	120									
Chinking ... d.	10.31	12.49			14.22	17.34		18.33						Hsuehchowfu ... d.														45	120									
Nanking ... a.	12.30	14.21			15.43	19.33		20.02						Pukow ... a.														45	120									
Pukow ... d.					19.10			21.00						Nanking ... d.					7.40		8.10	11.05					15.50	16.15	18.9									
Hsuehchowfu ... d.					—			5.08						Chinking ... d.					9.20		10.25	12.54					17.29	18.27	43									
Tientsin Central ... a.					—			13.16						Tanyang ... d.					9.57		11.21	13.36					18.03	19.26	24									
Do ... d.					—			—						Changchow ... d.					7.10		12.00	12.44	14.32				18.57	20.46	24									
Tientsin East ... a.					23.52			21.20						Wush ... d.					8.22		11.59	13.02	14.07	15.33			19.43	21.52	33									
Do ... d.					0.02			—						Soochow ... d.					8.21	9.39	12.54	14.02	15.25	16.31			19.43	21.52	33									
Peking ... a.					—			22.05						Nansiang ... d.	8.15	10.33	11.34	13.00			17.45	18.48	18.40	20.33			20.33		43									
					—			1.30						Shanghai North a.	8.42	11.00	12.05	13.30			15.00	16.30	18.20	18.45	19.17	21.05	22.00		43									

Woosung Forts to Shanghai North—Up													(Branch Line)		Shanghai North to Woosung Forts—Down																																												
STATIONS	Local	Fast	Local	3rd & 4th	S.M.L. Express	3rd & 4th	Local	S.M.L. Express	Local	Fast	Local	Local	STATIONS	Local	Fast	Local	Local	Fast	3rd & 4th	3rd & 4th	Fast	Local	Local	Express	Local	STATIONS	Local	Fast	Local	Local	Fast	3rd & 4th	3rd & 4th	Fast	Local	Local	Express	Local	7 P.M. Mail	High Speed																			
Woosung Forts d.	6.45	8.15	9.40	11.05	12.30	13.55	15.20	16.45	18.10	19.35	21.00	22.25	23.50	1.15	Shanghai North d.	6.00	7.30	9.00	10.25	11.50	13.15	14.40	16.05	17.30	18.55	20.20	21.45	23.10	2.35	Tientsin East d.	6.05	7.35	9.05	10.30	11.55	13.20	14.45	16.10	17.35	19.00	20.25	21.50	23.15	3.40	Do d.	6.10	7.40	9.10	10.35	12.00	13.25	14.50	16.15	17.40	19.05	20.30	21.55	23.20	4.45
Kiangwan d.	7.10	8.40	10.05	11.31	12.55	14.20	15.46	17.10	18.35	20.00	21.25	22.50	24.15	1.40	Tientsin East d.	6.05	7.35	9.05	10.30	11.55	13.20	14.45	16.10	17.35	19.00	20.25	21.50	23.15	3.40	Do d.	6.10	7.40	9.10	10.35	12.00	13.25	14.50	16.15	17.40	19.05	20.30	21.55	23.20	4.45	Do d.	6.10	7.40	9.10	10.35	12.00	13.25	14.50	16.15	17.40	19.05	20.30	21.55	23.20	4.45
Tientsin East d.	7.16	8.46	10.11	11.37	13.01	14.26	15.52	17.16	18.41	20.05	21.31	22.56	24.21	1.46	Shanghai North d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10	Do d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10	Do d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10
Shanghai North a.	7.20	8.50	10.15	11.41	13.05	14.30	15.56	17.20	18.45	20.10	21.35	22.60	23.85	1.50	Woosung Forts d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10	Do d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10	Do d.	6.15	7.45	9.15	10.40	12.05	13.30	14.55	16.20	17.45	19.10	20.35	21.60	22.85	4.10

R. Restaurant Cars.

* These additional trains run each Saturday and Sunday

S. Sleeping Cars

Shanghai-Hangchow-Ningpo Railway Abridged Time Table.

Shanghai North to Fushen—Down

(Main Line)

Fushen to Shanghai North—Up

STATIONS	Local	Express	2nd & 3rd & 4th	Fast	Local	Local	Night Express	STATIONS	Local	Local	Express	Local	2nd & 3rd & 4th	Fast	Local	Night Express
Shanghai North dep.	..	8.00	9.00	13.20	15.45	..	19.15	Fushen d.	..	..	7.15	..	8.40	13.20	15.35	18.20
Jessfield dep.	..	8.15	9.16	13.36	16.05	..	19.30	Hangchow d.	..	..	7.40	..	9.15	13.50	16.10	18.45
Sicawai dep.	..	8.21	9.23	13.43	16.13	..	19.36	Changau d.	..	..	8.29	..	10.45	15.00	17.45	19.45
L'hw Junction dep.	..	8.35	9.40	14.00	16.30	..	19.50	Yehsah d.	..	..	9.00	..	11.53	15.37	18.45	19.45
								Kashang d.	..	7.30	9.39	..	12.50	16.24	..	20.25
Shanghai South dep.	..	9.05	9.05	13.35	16.15	18.00	19.20	Kashang d.	..	8.02	10.02	..	13.26	16.52	..	20.40
Lunghua Junction arr.	..	8.23	9.23	13.45	16.08	18.15	19.38	Sungkiang d.	..	9.15	10.52	..	14.42	17.49	..	21.47
Lungkiang dep.	..	9.14	10.50	14.46	17.42	..	20.29	Lunghua Junction d.	8.37	10.57	11.57	13.57	16.07	18.48	..	22.17
Kashal dep.	..	10.01	11.57	15.43	18.47	..	21.16	Shanghai South d.	8.55	10.56	11.55	14.15	16.25	19.00	..	22.47
Kashang dep.	7.25	10.31	12.40	16.16	..	..	21.46									
Yehsah dep.	8.19	11.02	13.32	16.56	..	..	22.17	L'hw Junction d.	..	10.34	11.32	..	15.50	18.40	..	22.17
Hangau dep.	9.25	11.36	14.23	17.40	..	..	22.51	Sicawai d.	..	10.43	11.40	..	15.59	18.49	..	22.30
Hangchow dep.	11.00	12.30	16.00	18.50	..	..	23.45	Jessfield d.	..	10.51	11.46	..	16.06	18.56	..	22.36
Fushen arr.	11.25	12.45	16.10	19.10	..	..	24.00	Shanghai North a.	..	11.05	12.00	..	16.20	19.10	..	22.50

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Recent Decisions

Jan. 2 — Feb. 12, 1923

WANG ZIN ON, PLAINTIFF, v. THE WILKINS BROS. & CO., DEFENDANT.

(Cause No. 1180; decided January 2, 1923)

SYLLABUS
(By the Court)

Agency: SALES: COMMISSIONS. A party who is promised "a commission of one tael per spindle which you can sell for us" and "Tls. 80,000 at once when the bargain comes," is entitled to payment upon producing a purchaser who enters into a contract of sale; the former is not required to guarantee payment of the purchase price.
Messrs. Schuhl & Schoenfeld, by Mr. Schuhl, for plaintiff.
No appearance for defendant at the trial.

LOBINGIER, J.:

The plaintiff sues on the following instrument:

"Mr. Wang Zin On,
Shanghai.

Dear Sir,

We agree to pay you a commission of one tael per spindle which you can sell for us at Tls. 26.00 each, including c. i. f. & c. and duty. We will pay you Tls. 80,000 at once when the bargain comes.

Yours very truly,
The Wilkins Bros. & Co., Inc.,
P. N. Wilkins,
Manager." (Ex. A)

It is alleged in the complaint and admitted in the answer that defendant paid of the amount above mentioned the sum of Tls. 33,787, and defendant further

"alleges that the said sum together with a further sum of Sh. Tls. 13,799.95 was paid to the Plaintiff in full settlement of the Plaintiff's claim for commission due on account of the said 80,000 spindle mill."

No evidence is offered in support of this claim of settlement and defendant denies that he received any other sum than that first mentioned.

The principal point in the case arises from defendant's further denial

"that the said purchaser was able or ready or willing to make the said purchase in accordance with the terms of the said agreement or at all."

It will be seen that the agreement which furnishes the cause of action says nothing about the purchaser's ability or willingness to perform but promises "Tls. 80,000 at once when the bargain comes." We take this to mean that the commission was earned when a bona fide purchaser was obtained and that plaintiff was not to be prejudiced by any subsequent differences between defendant and the purchaser. Plaintiff in other words was performing his part of the contract by making a sale; he did not guarantee the payment of the purchase price. The law on this point has been stated as follows:

"Where an agent undertakes merely to produce a person who is able, ready, and willing to enter into a specified transaction with the principal on the terms prescribed by the latter, the production of such a person generally entitles the agent to the contract compensation, although the principal fails or refuses to enter into the transaction in question, or although the third person fails or refuses to complete the transaction on account of some default by the principal; and the agent is all the more entitled to the stipulated compensation if he procures a contract from a third person binding him to accept the principal's offer."

That plaintiff did procure such a purchaser as the contract requires appears clear from the records of this court of which we may take judicial notice in a case¹ involving defendant and the said purchaser. In that case, which was an action by the purchaser to recover back earnest money, defendant admitted the averment of the purchaser that he

"and the defendant entered into a contract for the sale by the defendant to the plaintiff of a certain lot of second-hand cotton spinning machinery consisting of an eighty thousand (80,000) spindle cotton spinning mill"

and

"that said sale was evidenced by an agreement in writing" etc.

In other words it appears from defendant's own admission that it not only entered into a contract with the purchaser whom the present plaintiff procured but made an actual sale. That would seem to be all that plaintiff's contract in the present case required; and it being admitted that plaintiff has not been paid in full

and there being no evidence of his waiver of the balance he is clearly entitled to judgment therefor.

It is accordingly considered and adjudged that plaintiff have and recover from defendant, upon the cause of action above recited, the sum of Tls. 46,213 together with his costs.

CHINESE-AMERICAN BANK OF COMMERCE, PLAINTIFF, v. GLOBE & RUTGERS FIRE INSURANCE COMPANY, DEFENDANT.

(Cause No. 1835; decided January 5, 1923)

SYLLABUS

(By the Court)

1. **Pleading: INSURANCE.** In an action on fire insurance policies an averment of "beneficial ownership" suffices; plaintiff need plead only an insurable interest.
2. **Id.:** "OTHER INSURANCE." Where the complaint sets out the total amount of the insurance a motion for "particulars of all other insurance" will not lie.
3. **Id.:** EVIDENCE need not be pleaded nor is it the province of a motion for a bill of particulars to secure it.
4. **Id.:** The pleader need not anticipate defenses.
Messrs. Davies & Bryan, by Mr. Bryan, for the motion.
Messrs. Shoop & Chalaire, by Mr. Chalaire, contra.

LOBINGIER, J.:

This is an action on certain policies of insurance alleged to have been issued by defendant to plaintiff. Defendant now moves

"for an Order requiring the plaintiff to furnish to the defendant a Bill of Particulars as to the ownership of the goods alleged to have been insured under the policies of insurance. ***particulars of all other insurance, if any, and to produce, procure and give to the defendant all plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information with respect to the claim and the origin and cause of the loss and the circumstances touching the amounts of the liability of the defendant."

As to the first requirement plaintiff sets out copies of the policies which appear to have been issued to it and alleges that "at the times hereinafter mentioned Plaintiff was the beneficial owner of" the insured property. As we have had occasion to say in another connection,

"It is well established that an equitable (i.e. beneficial) interest in property is an insurable one."¹

And it is sufficient if the complaint shows an insurable interest in plaintiff.² As was observed in one case where a motion similar to this was overruled,

"We can conceive of no good reason why a plaintiff in such a case should be required to set out his title or interest in the property destroyed specifically and with great particularity."³

As to the call for "particulars of all other insurance" plaintiff's averment (par. 7) would seem to suffice that

"The total insurance contracted prior to the time of said fire on the merchandise described in paragraph 3 of this complaint was G. Y. 160,000 maximum amount."

Unauthorized "other insurance" might constitute a defense but a pleader is not required to anticipate defenses.⁴

The remaining information sought by the motion seems to consist of evidence and it is a rule of this, as of other courts, that evidence need not be pleaded.⁵ Nor, as is well set forth in plaintiff's brief, is it the purpose of a motion of this kind to secure evidence.⁶ The requirement in the policies that the insured shall furnish such information is not a requirement that it be embodied into the form of a pleading and if such were the requirement it could not bind the courts. If plaintiff has failed to comply with the requirements of

1. "Fire Insurance," American & English Encyc. of Law (2nd Ed.) XIII, 145, and numerous cases there cited; cf. *Columbian Ins. Co. v. Lawrence*, 2 Pet. U. S. 25, 7 L. ed. 335.
2. *Encyc. of Pl. & Pr.* XI, 412.
3. *Phoenix Ins. Co. v. Rowe*, 117 Ind. 202, 20 N. E. 122. Cf. *Aurora Fire Ins. Co. v. Johnson*, 46 Ind., 315.
4. *Cyc.* XXXI, 109.
5. *Chiang Zung Corp. v. Insurance Co.*, 1 Extrater 200.
6. *Steinleger v. Franklin*, 117 Misc. (N. Y.) 693; *Hill v. International Products Co.* 202 App. Div. (N. Y.) 701; *Wolff v. Hubert*, 200 App. Div. (N. Y.) 124; *Smidt v. Bailey*, 132 App. Div. (N. Y.) 177.

1. *Corpus Juris* II, 769.

2. *Ring Mow Zu v. The Wilkins Bros. & Co. Inc.*, ante p. 66.

the policies in this respect such failure is a matter of defense to be pleaded in the answer.

On the whole we are of the opinion that the complaint is not open to the objections urged. The motion is accordingly

OVERRULED.

CHEMISCHE FABRIK GRIESHEIM ELEKTRON, PLAINTIFF, v.
INTERNATIONAL BANKING CORPORATION, DEFENDANT.

I ON DEMURRER.

(Cause No. 1945; decided January 6, 1923)

SYLLABUS

(By the Court)

1. **Actions:** A DEMAND, when prerequisite to suit, may be made by one having "full legal authority;" it need not be made in any particular form.
2. **Agency:** PRESUMPTION. One who was an agent at a certain date "and for some time thereafter" but to whom payment made some five years later was "without lawful cause or authority," cannot be presumed to have continued as such agent at the time of payment.

Messrs. Shoop & Chalaire, by Mr. Chalaire, for the demurrer.

Messrs. Fessenden & Holcomb, by Mr. Fessenden, contra.

LOBINGIER, J.:

A demurrer is here interposed to a complaint for the recovery of a deposit "belonging to plaintiff" (par. 12) but made on October 12, 1914 with an accompanying letter making it subject to checks "to be signed by both Messrs. Bradley & Co. Ltd. and Messrs. Siemssen & Co." (par. 6). The complaint further alleges that on or about April 30, 1919 the said deposit was paid to said Bradley & Co. and

"to the Public Trustee, Custodian for England *** with full knowledge and notice of the facts as to the title and ownership of said deposit or sum of money as herein alleged, and in violation of the terms and conditions of the aforesaid letter of October 12, 1914 as hereinbefore alleged and without lawful cause or authority and without the knowledge, consent, authority or signature of the said Siemssen & Co." (par. 11); "that upon learning of the disposition of the said deposit moneys as hereinbefore alleged, or shortly thereafter, the said Siemssen & Co., acting as attorneys in fact for plaintiff with full legal authority so to do, made demand upon defendant for repayment to the said Siemssen & Co., as attorneys in fact for plaintiff, of the aforesaid sum." (par. 15.)

It is this averment of demand which affords the principal basis of the demurrer, defendant contending that Bradley & Co. should have joined in the demand. Such, as we have seen, was the requirement for the signing of checks; but there was none such as regards the making of a demand and the very authorities relied upon by the demurrant exemplify the general rule that

"in the absence of any express requirement no particular form of demand is necessary."

Thus, a mere request by a receiver suffices.

"I think the understanding between the parties is, that the money shall remain with the banker until the customer, by his check, or in some other way, calls for its repayment."

"The plaintiff was not compelled to make the demand in person, but might do so through her duly constituted agent or attorney."

Indeed it is even true that "commencement of the action*** is itself demand." Moreover

"In the absence of express requirement there is considerable conflict of authority as to when a demand is or is not a condition precedent."

It must be remembered also that, according to the admitted averments, the deposit had already been paid over to other parties than plaintiff in breach of the instructions. True, one of these parties had been plaintiff's agent but we are unable to follow defendant's assumption (p. 4) that such agency continued at the time of said payment. The principal averment on that point is

"That during the month of October 1914 and for some time prior thereto and thereafter, Bradley & Co. Ltd., a British corporation, was the agent in Shanghai, China, of the plaintiff." (par. 3)

But with that must be coupled the further averment that the payment was made "without lawful cause or authority." Since, then, the agency of Bradley & Co. continued only "for some time" after October 1914 and since on April 30, 1919 the payment to Bradley & Co. was "without lawful cause or authority" we think it fairly inferable that Bradley & Co. was then no longer plaintiff's agent.

Such being the case, defendant having "full knowledge" that the deposit belonged to plaintiff and that it had been wrongfully paid to others, a demand by the remaining agent, whose authority still continued, would seem quite sufficient.

1. Corpus Juris I, 979.

2. Delahunty v. Bank, 56 N.Y.S. 39.

3. Downes v. Phoenix Bank, 6 Hill (N. Y.) 297.

4. Levy v. Trust Co., 156 N.Y.S., 295.

5. Brewer J., in Kaufman v. Tredway, 195 U. S. 271, 49 L. ed. 190.

6. Corpus Juris I, 978.

And while defendant cites a New York decision to the effect that a demand is not excused by the improbability of compliance, there is ample authority elsewhere for the rule that a demand is unnecessary where it would be useless or "would not be complied with".⁸

Especially in view of the admitted averment that the demand in this case was made by one having "full legal authority" we are of the opinion that the complaint is not subject to the objections raised and the demurrer is accordingly

OVERRULED.

II. ON MOTION FOR LEAVE TO INTERVENE.

(Decided February 16, 1923)

SYLLABUS

(By the Court)

Intervention: STARE DECISIS. The doctrine of several recent decisions reaffirmed.

Messrs. Hanson, McNeill, Jones & Wright, by Mr. Wright, for the applicant.

Messrs. Fessenden & Holcomb, by Mr. Fessenden, contra.

LOBINGIER J.:

After the overruling of the demurrer⁹ the party who was alleged to have paid the fund in question to the Public Trustee asked leave to intervene and in support of its application filed an affidavit reciting that it had executed an indemnity bond in the defendant upon the payment of the said fund. It submitted to the jurisdiction of this Court and offered to "abide by any judgment which may be rendered therein" etc. but in the affidavit it is stated that otherwise it will have to resist and attempt to enforce the said indemnity bond.

We may agree with plaintiff's counsel that the applicant has no right to intervene in this cause and also with the contention that this affidavit does not show the probability of a multiplicity of suits. Certainly if this were an application to enjoin plaintiff from suing (as was most of the cases referred to by plaintiff's counsel) it could not be granted.

But, entirely aside from the right of a party to intervene, the Court has discretion, where it would seem to be in the interests of all concerned, to permit the addition of new parties to litigation. This Court has already exercised that discretion in cases where the reasons were no stronger than here.¹⁰ In the last of these cases it was pointed out that where an alien asks leave to intervene and agrees to abide by the judgment of this Court, it is highly desirable to grant the application so as to avoid a possible conflict of jurisdiction and to lessen the number of suits. Nor is this entirely a matter of discretion, for:

"When a complete determination of the controversy cannot be had without the presence of other parties, the Court shall cause them to be brought in."¹¹

It is true that plaintiff is not directly interested in the relations between defendant and the intervenor; but plaintiff is not the only party to be considered in determining this point. Litigation should be so adjusted as to be least burdensome upon all parties and in this case it would be manifestly to the interests of defendant to have its entirely liability adjudicated in one proceeding.

Finally, we can see no real prejudice to plaintiff. The assistance which the proposed intervenor would render the defendant would not necessarily be greater in the action than out of it for in any event both are equally interested in resisting plaintiff's claim.

On the whole we are of the opinion that Bradley & Co. should be admitted as a party to this proceeding and it is accordingly allowed to file its petition within ten days from this date, each party to have a similar period to answer the same.

7. Southwick v. Bank, 84 N. Y. 420.

8. Corpus Juris I, 980, Sec. 80.

Ala. Hammatt v. Brown, 60 Ala., 498.

Ark. Tarwater v. Davis, 7 Ark. 153, 44 American Dec. 534.

Cal. Cox v. Delmas, 99 Cal. 121.

Ind. Whitcomb v. Stringer, (Ind.) 63 N. E. 585; Burns v. Fox, 113 Ind. 205, 14 N. E. 541; Harshman v. Mitchell, 1171 Ind. 312, 20 N. E. 228.

Iowa. Fay v. Fitzpatrick, 130 Iowa, 279, 105 N. W. 398; Ruiter v. Plate, 77 Iowa, 17, 41 N. W. 474.

Kan. Ritchie v. Huntington, 7 Kan. (2nd ed.) 162.

Mass. Heard v. Lodge, 20 Pick. 53, 32 American Dec. 197.

Wash. Whitehouse v. Mill Co. 50 Wash. 563, 97 Pac. 751; Burrows v. McCalley, 17 Wash. 269, 49 Pac. 510.

9. Ante p.

10. Dakoutchaeff v. China & Mongolia Export Co., ante p. 126; Fiseffer v. Stone, ante p. 345; Kamorovsky v. Fire Insurance Co., ante p. 388;

11. Extrater. Remedial Code, sec. 53.

III ON MOTION TO DISMISS INTERVENOR'S PETITION.

(Decided March 16, 1923)

SYLLABUS

(By the Court)

1. **Jurisdiction: PARTIES.** This Court has jurisdiction to render a judgment of dismissal against a foreign plaintiff; such judgment does not constitute affirmative relief.
2. **Pleading: THE PRAYER** forms no part of the statement of a cause of action or defense.

Messrs. Fessenden & Holcomb, by Mr. Fessenden, for the motion.

Messrs. Hanson, McNeill, Jones & Wright, by Mr. Wright, contra.

LOBINGIER, J.:

Plaintiff presents a motion to dismiss the intervenor's petition, filed in pursuance of this Court's order of February 16, and urges as its first and principal ground:

"that this Court has no jurisdiction of the subject matter of the claim or interest alleged by intervenor in said petition, in that the subject matter of said alleged interest or claim of intervenor, if such interest or claim exists in fact, is an issue solely between a British corporation (Bradley & Co., Ltd.) and a German corporation (Chemische Fabrik Griesheim Elektron)."

We do not think the Court is deprived of jurisdiction merely because an issue is raised between a foreign plaintiff and a foreign intervenor. This Court, cannot, of course, render an affirmative judgment against the foreign plaintiff; but it may declare the latter's claim unfounded, if the evidence so requires, and that is practically all that intervenor seeks. The prayer for costs may be disregarded for in no case is the prayer an essential part of the statement.¹²

But we cannot regard the issue here as one solely between plaintiff and intervenor. The former bases its cause of action upon the alleged ownership of a certain fund of which it alleges in its amended petition:

"That at the time the aforesaid sum of Shanghai Taels Twenty-four Thousand Six Hundred Twenty-two and 17/100 (Tls. 24,622.17) was deposited with Defendant as hereinbefore alleged, the said Bradley & Co. Ltd. had no legal or equitable title to or interest in the aforesaid deposit or sum of money or any part thereof, and said deposit or sum of money was then due, owing and payable in its entirety from the said Bradley & Co. Ltd. to plaintiff."

This averment is expressly denied in defendant's answer (Par. 2) and the intervenor alleges that it:

"Was at all times mentioned herein the sole owner of the Shanghai Taels Twenty-four Thousand Six Hundred Twenty-two and 17/100 (Tls. 24,622.17), deposited with the Defendant." (par. 8)

It will be seen, therefore, that it is defendant which raises the issue as to plaintiff's ownership of the fund and that the intervenor now supplements defendant's denial of such ownership by alleging title in itself. This combining with the defendant is perfectly admissible under one of the authorities cited by defendant, which declares:

"Where a particular plaintiff has brought suit against a defendant selected by him, a third person having an interest justifying such action may intervene and join him in claiming the same thing or something connected with it, or he may unite with the defendant in resisting the plaintiff's demand."¹³

Nor do we consider the situation altered by the fact that plaintiff sues to recover damages for diversion of the fund rather than for the fund itself. Without ownership of the fund it has no cause of action and if either defendant or intervenor can establish the want of such ownership plaintiff must necessarily fail. On the other hand if the intervenor can establish its claim of ownership of said fund it will be entitled to an adjudication thereof which will not only defeat plaintiff's claim but will also bind the other parties and bar further litigation. The suggestion that the intervenor might offer its evidence without being allowed to continue as a party would deprive it of the benefit of such adjudication.

We have examined all the authorities, marshalled with commendable industry by plaintiff's counsel, but are unable to find under the facts of any of them, doctrines contrary to the conclusion we have reached. The dictum in one¹⁴ of them that an intervenor "cannot urge matters that would go to the dismissal of the suit" is inconsistent with the later utterances, above quoted, from the same court as well as with the provision in our own code,¹⁵ that one may "become a party * * * by demanding relief adverse to both" plaintiff and

defendant. The phrase as quoted was probably not intended by the Louisiana Court to be taken generally but only as regards the facts in that particular case which are in no way parallel to those involved here.

The other grounds of the motion are largely a variation of those above discussed and the motion is accordingly

OVERRULED.

IN RE APPLICATION OF A. TILTON STEELE.

(Cause No. 2026; decided January 9, 1923)

SYLLABUS

(By the Court)

1. **Courts: JURISDICTION.** It is the amount claimed in the complaint which determines whether the Commissioner has jurisdiction and the latter is not ousted by filing a counter-claim for more than the limit.
2. **In: In.** In such cases the Commissioner may consider and adjudicate the counter-claim up to the amount of \$500.00 U. S. currency.
3. **"MANDAMUS** will not lie where there is an adequate remedy by appeal."

A. T. Steele, Esq., pro se.

F. J. Schuhl, Esq., contra.

LOBINGIER, J.:

This is a proceeding by the defendant in a cause now pending before the Commissioner to compel the latter "to transfer the record and file of the said cause"*** to this Honorable Court for trial" etc. It appears that the action below was for Taels 250., for attorney's fees, and that the present applicant, as defendant, filed an answer and counter-claim for \$2,000.00 U. S. currency. His contention is that this counter-claim, being beyond the limit of the Commissioner's power to render judgment, requires the cause to be transferred to this Court. But the Commissioner cannot be ousted of jurisdiction in any such manner.¹ If he could, almost any trial before the Commissioner could be terminated by the mere filing of a counter-claim. It is the amount claimed in the complaint which determines jurisdiction² and where the defendant files a counter-claim in excess of the limit, the court will consider and adjudicate it up to the limit but no farther.³

The applicant also complains of certain alleged procedural errors at the trial above referred to. But no judgment has been rendered. When it is, the applicant will have the right to appeal and where such right exists *mandamus* (for such appears to be the remedy here sought) will not lie.⁴

Since the hearing on his application, the applicant has filed a motion asking that the respondent "be required to answer or plead in accordance with the ordinary rules of court" etc. *Mandamus* however, is not an ordinary, but an extraordinary, remedy and the practice in this court is that when such application is presented it is first examined to determine whether it sets forth grounds which *prima facie* entitle the applicant to relief. On this point the applicant is heard and also the adverse party if he desires it. But the sufficiency of the application should be determined before requiring the latter to answer.

The procedure in this instance has been the same as in other cases. The application has been examined and found insufficient to justify the relief asked, and it is accordingly denied at the applicant's costs.

PERCY R. MOORE, PLAINTIFF, v. JAY ELMONT, ET AL, DEFENDANTS.

(Cause No. 1862; decided January 15, 1923)

SYLLABUS

(By the Court)

1. **Libel: WHAT CONSTITUTES.** A publication charging one with immorality is libelous *per se*.
2. **Id.: DAMAGES.** The one so charged is entitled at least to nominal damages.
3. **Id.: JUSTIFICATION.** The doctrine of U. S. v. Armstrong, I Extraterritorial Cases, 485, reaffirmed.
Messrs. Schuhl & Schoenfeld, by Mr. Schuhl, for plaintiff.
Messrs. Williams, Franklin & Faison, by Mr. Faison, for defendant.

1. *Fed. Bennett v. Forrest*, 69 Fed. 421 (From the Commissioner's Court in Alaska).
Minn. Barber v. Kennedy, 18 Minn., 196 (216).
N. C. Stacey Cheese Co. v. Pipkin, 155 N. C. 394, 71 S. E. 442.
N. S. Creighton v. Lindsay, 15 N. S. 243.
S. C. Corley v. Evans, 69 S. C. 520, 48 S. E. 459.
2. *Barber v. Kennedy*, 18 Minn. 196 (216)
3. *Bennett v. Forrest*, 69 Fed. 421. *Stacey Cheese Co. v. Pipkin*, 155 N. C. 394, 71 S. E. 442. See also *Alexander v. Peck*, 5 Blackf. (Ind.) 308, where a slightly different rule is provided by statute.
4. *Dodge & Seymour v. Porter*, II Extrater. 241, 243.

12. Cyc. XXXI, 110.

13. *St. Charles St. R. Co. v. Fidelity & Deposit Co. of Maryland*, 109 La. 491, 33 So. 574.14. *Cahn v. Ford*, 42 La. Ann., 965, 8 So. 477.

15. Extrater. Remedial Code, sec. 57.

LOBINGIER, J.:

The principal defendant admits that he published in several issues of the "Shanghai Gazette", a paper of general circulation at the time, the following advertisement relating to plaintiff, against whom a prosecution for adultery was then pending and undecided:

"Speakin' about the Moore Case! If that bird didn't put the 'Mor' in Mormon, he sure didn't put it in Morality. Take a run down Whangpoo Road and if you don't agree it is open season for Asbestos ear-muffs, then I haven't got the Best Chow, the Cleanest Rooms, and the best Service in Shanghai, and I'll furnish all the necessary evidence, to some 'just regular folks' who want to come to live with me I've a nice little apartment for two or three chaps and everything is the darb."

Defendant's counsel admits that this advertisement was "foolish" and "silly"; but it is really much more. In the first place it is settled that such a publication relating to the merits of a case duly pending in the courts, constitutes contempt.¹ Again it is a settled doctrine of this and other courts that a publication is libelous if it "merely tend to lessen a man in public esteem."² This publication, it is not seriously disputed, amounts to a charge of immorality. It certainly was as much so as the publication concerning a candidate for office:

"there was that Iowa Beecher business of his, which beat him out of a station at Grass Lake."³

of which it was observed:

"inasmuch as courts have no right to be ignorant of the meaning of current phrases which everybody else understands, it can hardly be seriously urged that such a charge, coupled with an averment that it lost a minister his situation, and backed with a justification, should be assumed without some explanation to be capable of an innocent meaning."

"Defendant was bound to show a loss of position at Grass Lake upon some charge of immoral conduct affecting the plaintiff's clerical character in order to justify this charge."

Such a charge is libelous *per se* and

"It is not necessary that the charge of unchastity be direct, but any written charges fairly imputing immorality or unchaste conduct, even though not amounting to illegal sexual intercourse, is actionable."⁴

The only defense pleaded by either defendant is the following alleged in the answer of the principal one:

"if the Honorable Court should hold that the alleged libelous words imputed to defendant charge the plaintiff with being a man of immoral character or promiscuous in his relationship with women, the said charge is true."

But even if this defense were fully established it would not suffice to absolve defendant from liability. For under the law obtaining in this jurisdiction

"the alleged libelous matter must not only be proved to be true, in order to constitute a defense, but it must be proved that it was published both with good motives and for justifiable ends."⁵

This was based upon a special act of Congress⁶ which, by virtue of a well known decision,⁷ is in force here and which provides as follows:

"That an injurious publication is presumed to have been malicious if no justifiable end or good motive is shown for making it."

A still later act⁸ reads:

"Any publication of a libel shall be justified if it appear that the matter charged as libelous was true and was published with good motives and for justifiable ends."

Now it will be seen that the defendants do not even allege that the publication here complained of and admitted, "was published with good motives and for justifiable ends." Much less do they attempt so to prove. In the language, therefore, of the statute first above quoted, said publication "is presumed to have been malicious." Added to this presumption is the admitted fact that the publication was timed to appear while plaintiff was on trial before this court for his reputation.

We need not stop to consider therefore whether or not there was a basis of truth for defendant's imputation. It is but fair to state however that plaintiff denied all charges of sexual immorality and that the evidence required in such cases must be equal

to that which would convict in a criminal prosecution for such offense.⁹ Even the party's confession has been held insufficient.¹⁰

But the law does not permit the publication of any sort of a statement, under any sort of circumstances, merely because it may be true. As was observed by an eminent English judge, "the greater the truth, the greater the libel." The meaning of this is that, except under certain conditions, as when one is a candidate for elective office, the publication of defamatory matter, even if true, would serve no worthy public purpose and would cause unnecessary hardship and suffering to individuals.

It is clear, then, that the principal defendant has failed to establish a legal defense and the only question as to him is the *quantum* of damages. But it has not been proved that his wife, the other defendant, had any part in the publication. The admission was merely that the "advertisement set out in Paragraph 3 of plaintiff's petition was published by the defendant Jay Elmont."

We have seen that the publication complained of is actionable *per se* and the rule in such cases is that "plaintiff is entitled to at least nominal damages."¹¹ No special damage is alleged in the petition or established by the evidence. Moreover, defendant has offered to defendant an apology for the publication and while a mere offer of this kind after an action is brought is not technically a ground for mitigating damages,¹² still we may consider it in determining whether anything more than nominal damages need be awarded.

But nominal damages as we have recently held¹³ may amount to as much as \$250.00 and we do not think that any less amount would suffice here in view of the character and time of the publication.

It is accordingly considered and adjudged that plaintiff have and recover from the defendant, Jay Elmont, the sum of \$250.00 U. S. currency, together with costs and that the remaining defendant be hence dismissed without a day.

HARRIET H. SWINEHART, PLAINTIFF, v. DUDLEY E. SWINEHART, DEFENDANT.

(Cause No. 1858; decided January 16, 1923)

SYLLABUS

(By the Court)

1. **MARRIAGE: MAINTENANCE.** "One of the prime duties arising out of the marital relation is the duty of the husband to support and maintain the wife."

2. **IN: FORFEITURE.** That right may be forfeited by misconduct but, like other material matters it must be clearly pleaded and proved.

Messrs. Schult & Schoenfeld, by Mr. Schult, for plaintiff.

Messrs. Williams, Franklin & Faison, by Mr. Faison, for defendant.

LOBINGIER, J.:

The petition in this case alleges

"that the Plaintiff married the Defendant on the 27th day of November, 1918 in the City of Kalamazoo, Michigan, and the said parties lived together as man and wife until the 16th day of March, 1922 when the Plaintiff because of Defendant's cruelty and illtreatment, separated from him and has not since cohabited."

To this the defendant by way of answer

"admits paragraph 1 of said petition, and that part of paragraph 2 which alleges that plaintiff and defendant were married in the City of Kalamazoo, Michigan, on November 27, 1918, and did live together as man and wife until on or about March 16, 1922; but generally and specifically denies each and every other material allegation contained in said petition."

It is observed in a well known work:

"One of the prime duties arising out of the marital relation is the duty of the husband to support and maintain the wife."

The husband may be relieved of this duty by the misconduct or fault of the wife but such grounds are never presumed; they must be pleaded and proved.

It will be seen that defendant's answer contains no such averment. Indeed, a literal interpretation of it amounts to a denial of the separation.

1. Corpus Juris XIII, 34.

2. Shaw v. Rae & Gallagher, 11 Extrater. Cases 125, and citations.

3. Bailey v. Kalamazoo Pub. Co., 40 Mich. 251.

4. Cyc. XXV, 315, 316.

5. U. S. v. Armstrong, 1 Extrater. Cases 485, 487, quoting U. S. v. Ocampo, 18 Phil. 55, affirmed, 234 U. S. 91, 58 L. ed. 1231.

6. Act of Mar. 3, 1899, 30 U. S. Stat. at Large, Sess. III, Ch. 429, Tit. I, Sec. 206; Alaska Code, Sec. 2087.

7. Biddle v. U. S., 156 Fed. 759.

8. Act of Congress of Mar. 3, 1901, 31 U. S. Stat. at Large Sess. II, Ch. 854, Sec. 817.

9. Am. & Eng. Encyc. of Law, Sec. ed XVIII, 1071.

10. Georgia v. Kepford, 45 Ia. 48.

11. Cyc. XXV, 539, 540.

12. Cyc. XXV, 424.

13. Chislin v. American Drug Co. *case* p. 40, citing Western Union Tel. Co. v. Glenn, 8 Ga. App. 168, 68 S. E. 881; Greensborough v. McGibbons, 93 Ga. 672, 20 S. E. 37. Cf. Atl. etc. Co. v. Stephens, 14 Ga. App. 173, 80 S. E. 516.

There being no averment of misconduct, there could properly be no proof thereof; for

"it is a well-settled principle that no proof can be offered of matters not put in issue by the pleadings."²

We are unable to find that plaintiff has forfeited her marital right of maintenance and it follows that her prayer at least in part, therefor must be granted. It is for

"\$250.00 per month to pay her board and lodging which is now due, Tls. 100.00 to pay the cost of this action, and the sum of Tls. 500.00, as and for her Counsel fees."

On August 30 an order was entered allowing plaintiff M. \$150.00 per month. Plaintiff now testifies that this is insufficient. On the other hand defendant states that he is receiving Tls. 300.00 per month or about M. \$400.00 and that his living expenses require M. \$150.00. Moreover he once set aside a trust fund of approximately \$4,000.00, U. S. currency, for plaintiff's maintenance³ which only defendant's objection prevents her now from using. This would seem to justify a slight increase of plaintiff's allowance besides payment, by instalments, of something to plaintiff's counsel who, the testimony shows, have received no fees.

It is accordingly considered and adjudged that, in addition to the amount heretofore allowed, defendant pay plaintiff M. \$25.00 per month and that he pay, by monthly instalments of Tls. 25.00 a fee of Tls. 300.00 to plaintiff's counsel, together with the costs of this action; and defendant is authorized to draw upon the trust fund involved in Cause No. 1670 in paying the monthly instalments for his wife's maintenance.

RUSSIAN ECONOMIC SOCIETY, PLAINTIFF v. LIBERTY CLUB
DEFENDANT. HALL & HOLTZ, LTD., PLAINTIFF,
v. LIBERTY CLUB, DEFENDANT.

(Cause Nos. 1473 and 1810; decided February 9, 1923)

SYLLABUS
(By the Court)

1. **Voluntary Associations:** CONTRACTS entered into by a member of a voluntary association without the authority or knowledge of his fellow members do not bind the latter.
2. **LANDLORD AND TENANT.** Reletting without the lessee's consent usually constitutes a waiver of the terms of the lease.

Messrs. Williams, Franklin, & Faison, by Mr. Faison, for the first plaintiff.

Messrs. Davies & Bryan, by Mr. Davies, for the second plaintiff.

Messrs. Schuhl & Schoenfeld, by Mr. Schuhl, for defendant.

LOBINGIER, J.:

These actions, which were tried simultaneously were brought against a defendant which is described in the first complaint as

"an unincorporated society or club ** associated together for a common enterprise, under a common name, for social ends and purposes." (Par. 2)

The said complaint is based on an instrument (Ex. C) purporting to be executed by plaintiff and "Neville Craig for (or per) Liberty Club" on February 23, 1921 at which time, the complaint alleges, "the defendant club was partly organized." It was evidently not intended as anything more than a provisional instrument for it provides "this lease have the lawful right till the undersigning the new more detailed lease" etc. (Par. 4).

Moreover, on March 10 following, plaintiff's representative wrote Mr. Craig:

"I beg to request you to make haste to sign the contract with the particulars as indicated by paragraph 4 of our agreement of the 23rd of February 1921.

Will you be so kind as to sign the inventory which is in your possession for the articles in the flat you are occupying." (Ex. 2.)

Again on March 21, the same representative wrote to the same party:

"Referring to our letter of March 10th we beg you to acknowledge receipt of same give us an answer before the 25th a. c. I beg to request you to make haste to sign the contract with the particulars as indicated by paragraph 4 of our agreement of the 23rd of February 1921.

Will you be so kind as to sign the inventory which is in your possession for the articles in the flat you are occupying." (Ex. 3)

It seems clear, then, that plaintiff expected the "particulars" of the lease to be set forth in a later instrument and this may have been the reason why that of February 23 contains no express undertaking to keep the premises for any particular time, the provision on that point being unilateral and merely that

"Is to be let for a term commencing on the twenty-third day of February, 1921 and terminating on the thirty-first day of December, 1923 the second floor of the big house" etc.

It is not claimed that the proposed later instrument was ever executed by anyone and we would not be justified in finding, as plaintiff's counsel requests (par. 2), that even Mr. Craig bound himself to keep and pay for the premises "for the period February 23, 1921 to December 31, 1923." The one fact which is clear from the correspondence up to this point is that plaintiff was dealing with Mr. Craig alone. The Liberty Club is not mentioned in either letter.

Now Neville Craig was but an individual. He was not even an officer of the Liberty Club and there is no evidence that any officer or member authorized or assumed to authorize him to bind it or held out such authority. On the contrary, plaintiff's first witness testifies (referring to a period before February 23, 1921) to a

"meeting at which four or five attended. ** The rental of that place was being discussed. I told them it was impossible for an organization such as we had to try to pay such a rent and I left the meeting. ** I am sure there were others there that were of my opinion. In fact I think the whole meeting was of the same opinion." (Trans. pp. 5,6,7)

The rule as regards a voluntary association of this kind, organized without expectation of profit, is that

"If an officer, in making a contract in the association's behalf, acts without authority or in excess of his authority, the association is not bound thereby."

For

"the liability of the individual members is controlled by the law of agency, and to hold a member liable it must be shown that he actually or constructively assented to or ratified the contract upon which liability is predicated."

Plaintiff's counsel asks us to find that "the Liberty Club was subsequently and completely organized." That is likewise contrary to the testimony of its first witness who says:

"The thing was never thoroughly organized. It was never really an organization. ** I do not think there was ever a constitution drawn up." (Trans. pp. 2, 3)

Another witness called by plaintiff testifies:

"Club was not organized. No articles were drawn up. Nobody saw any articles. My idea of the club was merely that Mr. Craig was endeavoring to organize a club and applied to various people who he thought might be interested in the formation of such a club." (Trans. p. 48)

It is conceded that the club was never incorporated but we are asked to find that "at a formal opening of said club" certain officers were elected. The first witness above quoted says on this point:

"I think at the original meeting at the Y.M.C.A. the officers were elected.

Q. By the members?

A. By the group there, really no membership at that time." (Trans. p. 10)

The one who is referred to as the president testifies:

"I do not know whether I was properly elected, I was not present at the election. I was notified by either Mr. Craig or Mr. Wright, neither one of whom were officers, that I had been elected. **

Q. Why did you resign?

A. Because the proposition was a surprise to me. When I got there I found that there was a large building rented, or a great portion of a large building fully furnished and the club had not been organized. ** This election took place during my absence from Shanghai. As a matter of fact I had not been consulted on the question of my election." (Trans. pp. 46, 47)

It is not without significance, also, that at the defendant club's one public meeting, as reported by the press and mentioned in the evidence

"there were over 100 members present, Mr. Perkins, Vice-Consul presided and was elected honorary president." (Trans. p. 10)

The other president would seem, therefore, to have been little more than a nominal one.

Of the others whom we are asked to find were officers Dr. Dunn says (Trans. pp. 9, 10) he was not the treasurer but was merely "put on the Executive Committee;" Mr. Wright states (Trans. p. 19) that he "was never an officer" and Mr. Shainan (Trans. p. 32) that he was "temporary treasurer * * elected after the club had been already in its quarters."

We are asked (par. 5) to find not only that these parties were officers but that they and the members took possession

"having knowledge of the fact that Neville Craig had contracted with the Russian Economic Society in respect of the premises in question for and on behalf of the Club."

On this point the one who had been elected president of the club testified:

1. Cyc. XXI, 1151.

2. Cyc. XXXI, 680.

3. See Swinehart v. Swinehart, et al., ante, p. 415.

1. Corpus Juris, V, 1352.

2. Robbins Co. v. Cook, (S. D.) 173 N. W. 445, 7 A. L. R. 218, where many authorities are cited and to which is appended a copious note.

- "Q. When did you first learn that Mr. Craig had entered into a written lease with the Russian Economic Society, having reference to the premises occupied by the Liberty Club?"
- A. I had an intimation from your good self some time last year on that subject, a considerable time after the Liberty Club had ceased to exist.
- Q. That was the first time you knew of it?
- A. Absolutely the first time I knew any lease had been entered into, that it was alleged that any lease had been entered into." (Trans. p. 44)

Every other member who was questioned on the subject testified that he knew nothing of any such lease in advance (Trans. pp. 30, 32) and plaintiff's president admits (Trans. p. 86) that he dealt with Mr. Craig alone and never consulted the other members. One of plaintiff's directors first testified (Trans. p. 97) that defendant's nominal president declined to discuss the matter with him. Subsequently the director related an alleged conversation as follows:

"I tell him, 'Do you know that according to our lease with American Liberty Club you must pay three months in advance?' He tell me, 'Yes, I know but Mr. Craig now is died,' but I tell him 'This lease was signed by Mr. Craig for Liberty Club.' He tell me, 'Yes, but we can pay only for one month in advance and I think that this month will be the last one.' (Trans. p. 101)

This is claimed to have been "the end of April or the first of May" (1921) more than two months after the lease was executed. But if impeachment were the purpose, the foundation should have been laid by calling the president's attention to the alleged conversation and giving him an opportunity to deny or explain.³ In any case we could not find from this evidence that defendant's nominal president knew of the lease at any time, for plaintiff's director is an interested witness quite as much as the former and the burden of proof rests upon plaintiff.

But even if all these parties had been informed of the lease and had examined it what would they have found? The clause above quoted, authorizing, but not requiring, the lessee to retain possession until December 31, 1923 and the other clause disclosing that the instrument was merely provisional to "the new, more detailed lease" which was never executed.

Again a finding is requested (par 6) that these "officers and members of the Liberty Club, occupied, used and frequented the club's premises."

As regards the officers, the nominal president testifies (Trans. p. 45) that he "was there once on the premises." Dr. Dunn says (Trans. p. 2) "I think I was there on one or two occasions" and there is no contradiction of either. It is true that the club did occupy the premises in question for some two months following February 23, 1921 and if this were merely an action to recover rent during the period of occupancy, the claim of ratification might be sound. But not only was plaintiff paid the full amount of rent for such period; it was given an additional month's rent after the occupancy ceased. What plaintiff is here asking is not recovery for actual use and occupation but for two years and eight months beyond that.

The following finding is also requested (par. 9):

"On or about May 23, 1921, one Shrake, a member of the Liberty Club, represented to the Russian Economic Society that the Liberty Club, before unincorporated, was to be incorporated under the name of the American Athletic Club, and requested the Russian Economic Society to rewrite the lease formerly executed in favor of the Liberty Club, for the unexpired term of said lease, in the name of the American Athletic Club. This the Russian Economic Society did, believing the two clubs to be identical."

It is perfectly true that plaintiff did enter into a new lease (Ex. F) for the same premises with a concern styled the "American Athletic Club" for a term commencing May 23, 1921. The amount of the rental was to be the same, but the provision for paying three months in advance was changed and the new lease required advance payment for only one month.

But the other recitals in the requested finding are far from established. In the first place we find no competent evidence that "one Shrake" was "a member of the Liberty Club." Plaintiff's president gives as a reason for so stating that "he (Shrake) was in possession of the keys of the club." (Trans. p. 78) He does not state when Shrake came into such possession but as the lessee's representative Shrake would naturally have the keys. Again plaintiff's president testifies:

"Mr. Saveloff was sent to the president of the club to talk about the keys of the club because the club was shut up, but the president of the club said that the keys were in the possession of a member of the club, Mr. Shrake, who had a right to represent the club in all affairs." (Trans. p. 78)

This, of course, is mere hearsay. Had there been any such conversation with defendant's president, Mr. Saveloff himself would have been the one to relate it. But, altho he testified immediately afterwards, he says nothing about such conversation tho he does relate (Trans. pp. 97, 98) an alleged interview with the defendant's president. Again, a few days after the new lease, plaintiff's president dictated and signed (Trans. pp. 84, 99) a letter addressed to "M. F. Perkins, Esquire, Consul for the United States" which contained the following:-

"Mr. Shrake, an American Citizen came on May 29, 1921 to the office of the Board of the Society and stated that he is empowered by the American Athletic Club to negotiate about the continuation of rent of the same premises, as the 'Liberty Club' does not already exist, but many of its members will join the 'Athletic Club' whilst the furniture of the first Club is being transferred to the new Club and remains in the same premises." (Ex. 4)

It will be seen that no claim is made in this letter that Shrake was a member of, or represented, the Liberty Club. Indeed the writer of it recognizes that the Liberty Club is already non-existent and that he was dealing entirely with "the new club." This is further emphasized by his testimony on cross-examination as follows:

- "Q. After you entered into the lease with the American Athletic Club you looked to Mr. Shrake for the payment of the rent, didn't you?"
- A. Yes, we applied to the American Consulate to get information about his address. Then we wrote a registered letter but did not receive any answer." (Trans. p. 83)

It seems very clear, therefore, that plaintiff's president who conducted the negotiations on its behalf, did not believe "the two clubs to be identical" (that seems to have been an afterthought) but, on the contrary, recognized that one of them had ceased to exist and that he was making not only a new lease but a new lessee.

Again, the reason for the new lease as recited in the requested finding is not that shown by the record. The mere fact that Shrake might have stated to plaintiff that the old Club was to be incorporated would not have justified the execution of a new lease, at least until the incorporation had actually taken place. That it did not take place plaintiff's director was informed by the Clerk of this Court (Trans. p. 99). But one of the reasons appears to have been the desire to waive the requirement of paying three months' rent in advance. Plaintiff's director testified as follows:

- "Q. Was this new lease to be a substitute for the old lease?"
- A. Only about payment. American Liberty Club must pay in advance three months but Mr. Shrake told me that for the Athletic Club it is very difficult to pay three months in advance and he asks Russian Economic Society now to make new agreement only for one month in advance.
- Q. And you were willing to let them have that privilege of paying only one month?
- A. Yes.
- Q. And that is why you entered into a new lease?
- A. Yes." (Trans. p. 102)

The truth seems to be that plaintiff was quite willing to relet the premises to any other tenant, regarding defendant as non-existent and unable to pay. Mr. Raines, a non-member and a disinterested party testifies to a conversation with plaintiff's president as follows:

- "Q. You told him that the club was disbanded?"
- A. I told him it could not possibly exist any more, that there was no hope for it and he even offered to rent me the place for myself. I told him the rental was too high, was sorry, it might be possible for me to take it and run it as a boarding house if he would put the rental down. He offered to let me have it for Tls. 250. I offered him Tls. 200.
- Q. What did they say when you told them the club was going to disband?
- A. First of all they came down to the Trocadero to see if I would not pay Tls. 250. I told them it was too high. The next thing I heard they let a fellow named Shrake take it. He was going to turn it into an athletic club. I told him I was not going to be responsible for anything more." (Trans. p. 57, 58)

It is not claimed that defendant was notified of this new lease or its consent obtained and the transaction was, therefore, covered by the following rule:

"Where nothing is said as to the reletting, and the original lessee is not notified and does not consent, and there is no provision in the lease in regard thereto, the general rule is that the reletting shows an acceptance of the surrender."⁴

Counsel further requests us to find (par. 8) that plaintiff "demanded the return of the keys from" defendant's officers and members

"but the Club refused to deliver them up. On or about Aug. 10, 1921 the keys were returned to the Russian Economic Society by one Jack Raynes; a non-member of said Club."

³ Wigmore, Ev. II, sec. 1025 et seq.

⁴ Cyc. XXIV, 1376. Cf. In re Mahler, 105 Fed. 428; Ex parte Houghton, 12 Fed. Cas. 6725, 1 Lowell (U. S.) 554.

This again is contradicted by the testimony (Trans. pp. 83, 89, 100) of plaintiff's officers that the keys were returned on July 7. Plaintiff's president testifies (Trans. pp. 83) that they were returned by Shrake. He adheres to this on re-direct examination (Trans. p. 89) in spite of his counsel's suggestion that he "may have made a mistake." As the new lessee's representative, Shrake seems to have been entitled to the keys and if he received them from defendant it was in effect a delivery to the plaintiff.

The second plaintiff's claim for the price of furniture supplied to a member of the defendant club likewise rests upon no showing of authority from the other members. Said plaintiff's principal witness testifies (Trans. p. 90) that his estimates were sent to and his negotiations conducted with the same member who signed the instrument sued upon and a letter from the plaintiff's secretary appears in the record stating "that the only delivery receipts which we are able to trace were signed by" the same member. The first witness however, testifies that he relied principally upon the member's assurance that "the American Consul would be behind the Liberty Club." It appears that the consul referred to was defendant's honorary president who presided at its one public meeting. But regardless of whether this plaintiff may have been justified in relying upon such assurance, clearly it did not involve nor include the other club members, none of whom appear to have known of ordering the furniture. Moreover, on March 22, long after the delivery of the furniture, the second plaintiff wrote to the same member asking him as a special favor to make payment at once. It is clear therefrom that said plaintiff was not looking to the club for payment. It may be added that the administration of said party's estate was pending in this court for a year and a half after the Liberty Club ceased to exist and either plaintiff might easily have filed its claim against said estate.

In view of the foregoing it seems unnecessary to devote much space to the question of the right to sue a concern such as the defendant is alleged to be. But there was no such right at common law.

"An unincorporated association cannot, in the absence of statute, be sued in its society or company name, but all the members must be made parties, since such bodies have, in the absence of statute, no legal entity distinct from that of their members."⁵

Both of these actions, however, appear to have been brought under the following provision:

"When two or more persons associated in any business, transact it under a common name, they may sue and be sued therein regardless of whether it includes their individual names, but the latter must be disclosed upon demand of the adverse party."⁶

But it is not alleged that the defendant in these cases is composed of "persons associated in any business". On the contrary the complaint in the first case alleges, as we have seen, that defendant is composed of "citizens *** associated *** for social ends and purposes" while that in the second case merely alleges "that defendants are an unincorporated club" etc. (Par. 2). We have recently held the provision last quoted insufficient to justify a suit by an organization—a Chinese family—much more closely associated than defendant is alleged to be. The demurrer to the first complaint, which was not called up before the trial, would, therefore, have been sustained.

Upon the whole we must find the evidence insufficient to support a judgment for either plaintiff upon the cause of action set forth in its complaint and it is accordingly considered and adjudged that each take nothing thereby.

H. E. RAILTON & CO., LTD PLAINTIFF vs. SONN BROS. IMPORT & EXPORT CO., INC. DEFENDANT.

(Cause No. 1773; decided February 10, 1923)

SYLLABUS

(By the Court)

1. **Sales:** PLEADING: UNDER A GENERAL DENIAL in an action for failure to accept delivery of merchandise, evidence of inferior quality is not admissible.
2. **IN WARRANTY.** As a rule there is no implied warranty of quality.
3. **IN THE MEASURE OF DAMAGES** in such a case is the difference between the contract and market price at the time of delivery.
Messrs. Davies & Bryan, by Mr. Davies, for the plaintiff.
Messrs. Schuh & Schoenfeld, by Mr. Schuh, for the defendant.

LOBINGIER, J.:

This is an action for damages for failure to accept delivery of the last two consignments of six thousand gross of hair nets purchased by the defendant from plaintiff under an arrangement to deliver one-third each during the months of April, May and June, 1922. The contract is admitted but to the other averments defendant interposes a general denial. The real defense, however, is that the goods were not of proper quality and defendant was allowed to call three witnesses who testified to their inferiority, one stating that they were "too small."

This evidence was objected to by the plaintiff and was admitted solely subject to the objection, ruling being reserved. Upon further consideration we are of the opinion that it should not be considered. Defective quality is an affirmative defense which ought to be pleaded; it is not admissible under the general denial to which defendant has restricted its answer. Opportunity was given for an amendment, but no change was made in this particular.

Moreover we doubt if such a defense could have been established if pleaded. It is well settled that there is no implied warranty of quality.⁷ In this instance the contract was effected by telegram and there was no mention of quality. Previously, however, letters had passed between the parties in one of which plaintiff had expressly stated that it did not "guarantee quality."

Again it is admitted that the defendant accepted and paid for one-third of the goods purchased and it is not claimed that the quality of that portion, which plaintiff's manager says was standard "and what we sell as first quality" was any different from the remaining two-thirds. On the whole, therefore we must find that the plaintiff is entitled to recover.

The measure of damage in such a case is the difference between the contract price and the market price at the time of delivery.⁸ The contract price in this instance was M\$6.80 per gross. The only testimony as to the market price is that of plaintiff's managing director who states that during May it was M\$4.30 per gross and during June M\$3.00. For the thousand gross to be delivered in May, therefore, the difference would be M\$5,000 and for the remaining two thousand, deliverable in June the difference would be M\$7,600 making a total of M\$12,600.

It is accordingly considered and adjudged that plaintiff recover from defendant the said sum of M\$12,600 together with costs.

1. C₂c, XXXI, 695.

2. Neumann Gesellschaft v. Zimmerman, 1 Extrater. Cases, 506, citing C₂c, XXXV, 214.

3. Yu Yar Chuan v. Shippers Commercial Corporation, ante p. 286.

5. Corpus Juris V, 1369.

6. Extrater. Remedial Code, sec. 47.

7. Hsu Wen Hwa Tang v. Standard Oil Co., ante, p. 245.

HUNG TAI HONG PLAINTIFF, vs. ASIA BANKING CORPORATION (A CORPORATION) AND GASTON, WILLIAMS & WIGMORE (A CORPORATION), DEFENDANTS.

(Cause No. 1678; decided February 12, 1923)

SYLLABUS

(By the Court)

1. **Pleading:** A DEMURRER admits all well pleaded averments.
2. **Id.** The sufficiency of a pleading is not affected by the prayer; if the cause of action is stated the Court will grant the proper relief.
Messrs. Davies & Bryan for the first demurrant
Messrs. Skoop & Chalaire for the second demurrant.
H. D. Rodger, Esquire, contra.

LOBINGIER, J.:

The cause of action here is an order by a consignee to a wharfinger for the delivery of a consignment of flake glue which, it is alleged, was held by the second defendant "as security for an indebtedness of" the first who assigned it to another for a consideration, apparently the amount of the indebtedness, after which the second defendant indorsed it as follows:—

"Deliver to Gaston, Williams & Wigmore on payment of all charges—

Shanghai, the July 30th, 1921,
per pro. Asia Banking Corporation,
R. S. Smith."

Subsequently the assignee of the order assigned it for a larger consideration to plaintiff who alleges that he

"Duly presented the said delivery order to the custodians of the said 113 bags of flake glue and demanded delivery thereof. That thereupon the plaintiff was informed and the plaintiff believes and basing its allegation upon such information and belief, plaintiff alleges that the defendant Asia Banking Corporation had theretofore wrongfully and knowingly converted the said 113 bags of flake glue to its own use and the defendants thereupon after due demand failed and refused to deliver the said glue to the plaintiff."

A general demurrer is interposed by each defendant and briefs are presented in behalf of all parties in which there is much discussion as to whether the delivery order is a negotiable instrument. We may agree with defendants' counsel that such a document would not fall within the terms of the negotiable instrument law¹ and we may also agree with plaintiff's counsel that a warehouse receipt may be negotiable.² But the instrument sued upon is not a receipt, nor does it comply with the requirements of the section last cited.

But while not negotiable, the instrument before us would seem to be transferable by endorsement and delivery, as the complaint alleges, and to pass thereby all of the interest of both defendants, so that plaintiff would be entitled as against defendants to the immediate possession of the goods described.

The complaint alleges, as we have seen, that one of the defendants "had theretofore wrongfully and knowingly converted" the goods "to its own use," and that both defendants have "failed and refused to deliver." It is true that these averments are made upon information and belief, as in fact are allegations in most pleadings, but the demurrers admit such averments as well as all others properly pleaded.³

We need not stop to enquire whether plaintiff is entitled to the precise relief prayed for; it suffices if he set forth a breach of his rights, leaving it for the Court to apply the proper remedy. We think the complaint, fairly construed, alleges that both defendants are guilty of preventing the delivery to plaintiff of goods for which he had paid and which are described in the document which both defendants had assigned. This would seem to constitute a breach of plaintiff's rights and entitle him to some relief.

The demurrers are accordingly overruled and each defendant is given ten days to answer.

UNITED STATES v. JAMES SLEVIN

(Cause No. 2048; decided February 13, 1923)

SYLLABUS

(By the Court)

1. **Neutrality:** "EXPORTATION" within the meaning of the Congressional Joint Resolution of January 31, 1922, is complete when the subject thereof is landed in a country included in the terms of said Resolution.
2. **Id.** Subsequent transshipment within the country after such landing is not within said terms.
3. **Id.** "MUNITIONS OF WAR" as there used do not include instruments designed and constructed for purely commercial purposes.
4. **EVIDENCE** found insufficient to convict.
5. **Consular Courts:** INJUNCTIONS. Whether a consular court may issue an injunction *quare*; at most it can do so only in a civil cause and upon a proper complaint.

1. Act of Congress of January 12, 1899, 30 U. S. Stats. at Large, Ch. 47
2. Act of Congress of April 15, 1910, 36 U. S. Stats. at Large, Pt. I, p. 301, sec. 5.
3. Cyc XXXI, 333 *et seq.*

Chauncey P. Holcomb, Esquire, Acting U. S. District Attorney, for the Plaintiff.

Messrs. Schuhl & Schoenfeld, by F. J. Schuhl, Esquire, for the defense.

LOBINGIER, J.:

The defendant is charged with

"exportation of munitions of war to China" in that the said defendant, James Slevin, on various days during the months of June, July, August, September, October, November and December, 1922 at one or more of the following cities in the Republic of China, namely, Foochow, Shanghai, Peking and Hankow, and within the jurisdiction of this Court, did aid and abet in the exportation from the United States and in the importation into China of six Curtiss aeroplanes, munitions of war, contrary to the form, force and effect of the Statute."

It appears that the "statute" referred to in the information from which the foregoing is quoted is a Joint Resolution of Congress, the first section of which reads as follows:

"That whenever the President finds that in any American country, or in any country in which the United States exercises extraterritorial jurisdiction, conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."

It appears that on June 1, 1922 the defendant "on behalf of the Curtiss Aeroplane & Motor Corporation" of New York entered into a written contract with a Chinese concern known as the "Foochow Motor Car Company," for the sale of "6 (six) aeroplanes, Curtiss model JN4D2" for the sum of \$25,000 United States currency. The document was executed before the American Consul at Foochow and recites that

"with the permission of the Chinese Government (the purchaser) is about to start aeroplane transportation routes in Fukien Province, Republic of China, for mail, parcels and less bulky packages on which a high tariff may be paid, and for passenger service, and is desirous of purchasing aeroplanes for said purpose and hereby personally guarantees and makes it a part of this Sales Agreement that it intends to make use of said aeroplanes for purposes as above stated, and for other legitimate commercial purposes." (Ex. 2).

These aeroplanes were subsequently shipped from Tacoma and landed at Shanghai on a through bill of lading to Foochow, a permit having been previously obtained from the Secretary of State at Washington. Instead of being forwarded to Foochow, however, they were subsequently transhipped on an American vessel from Shanghai to Hankow, where, after being unloaded into Chinese junks, preparatory to landing, they were seized by order of the American naval commanding officer, on the supposition that they might be destined for military purposes, and a complaint was thereupon filed in the American Consular Court for the district of Hankow and, after a hearing, the defendant was bound over to this Court.

There is no competent evidence from which the Court can find that the aeroplanes in question were intended for military purposes. The nearest approach to such evidence is the following from the testimony of the ship captain who conveyed the planes from Shanghai to Hankow:

Q. You stated to the Boarding Officer on Sunday that these aeroplanes were destined for use in the Chinese Army under General Wu Pei Fu?

A. No. I did not say so. I stated that I heard so.

Q. From whom did you hear this?

A. From the comprador.

Q. This one (pointing to Mr. Li present)?

A. Yes. (Ex. A. p. 13)

Shortly afterwards and at the same hearing the comprador referred to was called as a witness, but the statement in question was not mentioned nor did the comprador give any evidence tending to support it. In any event it seems to have been purely hearsay and could afford no basis whatever for conviction.

Much is sought to be made of the deflection of the aeroplanes from Foochow, the original destination, to Hankow. Defendant's explanation of this is that the outbreak of civil war in Fukien Province rendered it impracticable to undertake flying operations there for commercial purposes and that inasmuch as the purchasers, or one of them, was also interested in business at Hankow it was decided to initiate the enterprise near that point instead of in Fukien. Defendant is corroborated in this by certain witnesses who are shareholders in the purchasing company, one of whom states (p. 10) that ground had been leased between Peking and Hankow for landing purposes. All of these witnesses deny any intention or knowledge

1. Joint Resolution approved January 31, 1922, sec. 1.